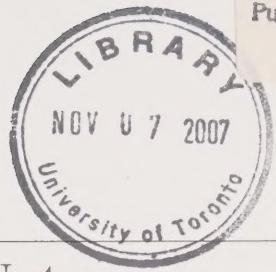


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Legislative Proposals, Explanatory Notes and Overview Relating to Registered Disability Savings Plans



Published by
The Honourable James M. Flaherty, P.C., M.P.
Minister of Finance

October 2007

Canada



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Department of Finance
Canada

Ministère des Finances
Canada

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Legislative Proposals

LEGISLATIVE PROPOSALS TO IMPLEMENT REGISTERED DISABILITY SAVINGS PLANS

PART 1

AMENDMENTS RELATING TO INCOME TAX

INCOME TAX ACT

1. Paragraph 4(3)(a) of the *Income Tax Act* is replaced by the following:

(a) subject to paragraph (b), all deductions permitted in computing a taxpayer's income for a taxation year for the purposes of this Part, except any deduction permitted by any of paragraphs 60(b) to (o), (p), (r) and (v) to (z), shall apply either wholly or in part to a particular source or to sources in a particular place; and

2. Subsection 18(11) of the Act is amended by striking out the word "or" at the end of paragraph (g), by adding the word "or" at the end of paragraph (h) and by adding the following after paragraph (h):

(i) making a contribution to a registered disability savings plan,

3. Clause 40(2)(g)(iv)(A) of the Act is replaced by the following:

(A) a trust governed by a deferred profit sharing plan, an employees profit sharing plan, a registered disability savings plan or a registered retirement income fund under which the taxpayer is a beneficiary or immediately after the disposition becomes a beneficiary, or

4. Subsection 56(1) of the Act is amended by adding the following after paragraph (q):

(q.1) amounts in respect of a registered disability savings plan required by section 146.4 to be included in computing the taxpayer's income for the year;

5. Section 60 of the Act is amended by striking out the word "and" at the end of paragraph (x), by adding the word "and" at the end of paragraph (y) and by adding the following after paragraph (y):

(z) the total of all amounts each of which is an amount paid in the taxation year as a repayment, under the *Canada Disability Savings Act*, of an amount that was included because of section 146.4 in computing the taxpayer's income for the taxation year or a preceding taxation year.

6. Subsection 74.5(12) of the Act is amended by striking out the word "or" at the end of paragraph (a.1) and by adding the following after paragraph (a.1):

(a.2) as a payment of a contribution under a registered disability savings plan; or

7. Paragraph 75(3)(a) of the Act is replaced by the following:

(a) by a trust governed by a deferred profit sharing plan, an employee benefit plan, an employees profit sharing plan, a registered disability savings plan, a registered education

Registered
disability
savings plan
payments

Repayment
under the
*Canada
Disability
Savings Act*

savings plan, a registered pension plan, a registered retirement income fund, a registered retirement savings plan, a registered supplementary unemployment benefit plan or a retirement compensation arrangement;

8. Paragraph 107.4(1)(j) of the Act is replaced by the following:

(j) if the contributor is an amateur athlete trust, a cemetery care trust, an employee trust, an inter vivos trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, a related segregated fund trust (as defined by section 138.1), a trust described in paragraph 149(1)(o.4) or a trust governed by an eligible funeral arrangement, an employees profit sharing plan, a registered disability savings plan, a registered education savings plan or a registered supplementary unemployment benefit plan, the particular trust is the same type of trust; and

9. Paragraph (a) of the definition “trust” in subsection 108(1) of the Act is replaced by the following:

(a) an amateur athlete trust, an employee trust, a trust described in paragraph 149(1)(o.4) or a trust governed by a deferred profit sharing plan, an employee benefit plan, an employees profit sharing plan, a foreign retirement arrangement, a registered disability savings plan, a registered education savings plan, a registered pension plan, a registered retirement income fund, a registered retirement savings plan or a registered supplementary unemployment benefit plan,

10. The definition “adjusted income” in subsection 122.5(1) of the Act is replaced by the following:

“adjusted income” of an individual, for a taxation year in relation to a month specified for the taxation year, means the total of the individual's income for the taxation year and the income for the taxation year of the individual's qualified relation, if any, in relation to the specified month, both calculated as if no amount were included under paragraph 56(1)(q.1) or subsection 56(6) or in respect of any gain from a disposition of property to which section 79 applies in computing that income and as if no amount were deductible under paragraph 60(y) or (z) in computing that income.

11. The definition “adjusted income” in section 122.6 of the Act is replaced by the following:

“adjusted income” of an individual for a taxation year means the total of all amounts each of which would be the income for the year of the individual or of the person who was the individual's cohabiting spouse or common-law partner at the end of the year if no amount were included under paragraph 56(1)(q.1) or subsection 56(6) or in respect of any gain from a disposition of property to which section 79 applies in computing that income and if no amount were deductible under paragraph 60(y) or (z) in computing that income;

12. Paragraph (a) of the definition “excluded right or interest” in subsection 128.1(10) of the Act is amended by adding the following after subparagraph (iii):

(iii.1) a registered disability savings plan,

13. Paragraph 132.2(3)(h) of the Act is replaced by the following:

“adjusted income”
« revenu
rajusté »

“adjusted income”
« revenu
modifié »

(h) where a share to which paragraph (g) applies would, if this Act were read without reference to this paragraph, cease to be a qualified investment (within the meaning assigned by subsection 146(1), 146.1(1) or 146.3(1), section 204 or subsection 205(1)) as a consequence of the qualifying exchange, the share is deemed to be a qualified investment until the earlier of the day that is 60 days after the day that includes the transfer time and the time at which it is disposed of in accordance with paragraph (g);

14. The Act is amended by adding the following after section 146.3:

Registered
disability
savings plan
— definitions

“assistance
holdback
amount”
« montant de
retenue »

“contribution”
« cotisation »

“director”
« administrateur »

“disability
assistance
payment”
« paiement
d'aide à
l'invalidité »

“disability
savings plan”
« régime
d'épargne-
invalidité »

146.4. (1) The following definitions apply in this section.

“assistance holdback amount”, in relation to a disability savings plan, has the meaning assigned under the *Canada Disability Savings Act*.

“contribution” to a disability savings plan does not include (other than for the purpose of paragraph (b) of the definition “disability savings plan”) an amount paid into the plan under the *Canada Disability Savings Act* or a prescribed payment.

“director” of a disability savings plan at any time means each of the following:

- (a) an entity that has, at that time, rights as an entity with whom the issuer entered into the plan;
- (b) an entity that has, at that time, rights as a successor or assignee of an entity described by paragraph (a) or by this paragraph; and
- (c) the beneficiary, if the beneficiary has, at that time, rights under the plan to make decisions (either alone or with other directors) concerning the plan, other than a right to direct that disability assistance payments be made as provided for in subparagraph (4)(l)(ii).

“disability assistance payment”, in relation to a disability savings plan of a beneficiary, means any payment made from the plan to the beneficiary or to the beneficiary’s estate.

“disability savings plan” of a beneficiary means an arrangement

- (a) between
 - (i) a corporation (in this section referred to as the “issuer”)

- (A) that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, and
- (B) with which the specified Minister has entered into an agreement that applies to the arrangement for the purposes of the *Canada Disability Savings Act*, and
- (ii) one or more of the following:
 - (A) the beneficiary,
 - (B) an entity that is, at that time, a qualifying person in relation to the beneficiary, and
 - (C) an entity that is, at the time the arrangement is entered into, a director of another arrangement that is a registered disability savings plan of the beneficiary;
- (b) under which one or more contributions are to be made in trust to the issuer to be invested, used or otherwise applied by the issuer for the purpose of making payments from the arrangement to the beneficiary; and
- (c) that is entered into in a taxation year in respect of which the beneficiary is a DTC-eligible individual.

“DTC-eligible individual”
“particulier admissible au CIPH”

“DTC-eligible individual”, in respect of a taxation year, means an individual in respect of whom an amount is deductible, or would if this Act were read without reference to paragraph 118.3(1)(c) be deductible, under section 118.3 in computing a taxpayer’s tax payable under this Part for the taxation year.

“life expectancy”
“espérance de vie”

“life expectancy” of a beneficiary under a disability savings plan, determined for a calendar year in connection with the plan, means

- (a) where, before the beginning of the year, a director of the plan provides the issuer of the plan with written certification by a medical doctor licensed to practise under the laws of a province (or of the place where the beneficiary resides) that the beneficiary’s life expectancy (determined without reference to this definition) is shorter than the beneficiary’s life expectancy otherwise determined under paragraph (b), the age (expressed in whole years) to which the beneficiary is expected to live based exclusively on that certification; and
- (b) in any other case, the greater of
 - (i) the beneficiary’s age (expressed in whole years) at the beginning of the year, and
 - (ii) the life expectancy (expressed in whole years) at birth, as determined by Statistics Canada,
 - (A) for the year of the beneficiary’s birth,
 - (B) for the beneficiary’s sex, and

(C) for the beneficiary's province of birth, if the beneficiary was born in a province (other than Yukon, the Northwest Territories or Nunavut), and for Canada, in any other case.

"lifetime disability assistance payments"
"« paiements viagers pour invalidité »"

"lifetime disability assistance payments" under a disability savings plan of a beneficiary means disability assistance payments that are identified under the terms of the plan as lifetime disability assistance payments and that, after they begin to be paid, are payable at least annually until the earlier of the day on which the beneficiary dies and the day on which the plan is terminated.

"plan trust"
"« fiducie de régime »"

"plan trust", in relation to a disability savings plan, means the trust governed by the plan.

"qualifying person"
"« responsable »"

"qualifying person" in relation to a beneficiary of a disability savings plan at any time means each of the following:

- (a) if, at that time, the beneficiary has not reached the age of majority, a legal parent of the beneficiary; and
- (b) if, at that time, the beneficiary is not contractually competent (whether because of age or otherwise) to enter into a disability savings plan,
 - (i) a guardian, tutor or curator of the beneficiary under the laws of the province in which the beneficiary resides, or
 - (ii) a public department, agency or institution that maintains the beneficiary.

"registered disability savings plan"
"« régime enregistré d'épargne-invalidité »"

"registered disability savings plan" means a disability savings plan that satisfies the conditions in subsection (2), but does not include a plan to which subsection (3) or (10) applies.

"specified Minister"
"« ministre responsable »"

"specified Minister" means the minister designated for the purposes of the *Canada Disability Savings Act*.

Registered status

(2) The conditions that must be satisfied for a disability savings plan of a beneficiary to be a registered disability savings plan are as follows:

- (a) before the plan is entered into, the issuer of the plan has received written notification from the Minister that, in the Minister's opinion, a plan the terms of which are identical to the plan would, if entered into by entities eligible to enter into a disability savings plan, comply with the conditions in subsection (4);
- (b) at or before the time the plan is entered into, the issuer of the plan has been provided with the Social Insurance Number of the beneficiary and the Social Insurance Number or business number, as the case may be, of each entity with which the issuer has entered into the plan; and

Registered
status nullified

(c) at the time the plan is entered into, the beneficiary is resident in Canada, except that this condition does not apply if, at that time, the beneficiary is the beneficiary under another registered disability savings plan.

(3) A disability savings plan is deemed never to have been a registered disability savings plan if

(a) the issuer of the plan has not, on or before the day that is 60 days after the particular day on which the plan was entered into, provided notification of the plan's existence in prescribed form containing prescribed information to the specified Minister; or

(b) the beneficiary was, on the particular day, the beneficiary under another registered disability savings plan and that other plan has not been terminated on or before the day that is 120 days after the particular day or any later day that the specified Minister considers reasonable in the circumstances.

(4) The conditions referred to in paragraph (2)(a) are as follows:

(a) the plan stipulates

(i) that it is to be operated exclusively for the benefit of the beneficiary under the plan,
(ii) that the designation of the beneficiary under the plan is irrevocable, and
(iii) that no right of the beneficiary to receive payments from the plan is capable, either in whole or in part, of surrender or assignment;

(b) the plan allows an entity to acquire rights as a successor or assignee of a director of the plan only if the entity is

(i) the beneficiary,
(ii) the beneficiary's estate,
(iii) a current or previous director of the plan, or
(iv) an entity that is, at the time the rights are acquired, a qualifying person in relation to the beneficiary;

(c) the plan provides that, where an entity becomes a director after the plan is entered into, the entity is prohibited (except to the extent otherwise permitted by the Minister or the specified Minister) from acting as a director until such time as the issuer has been advised of the new directorship and been provided with the entity's Social Insurance Number or business number, as the case may be;

(d) the plan prohibits contributions from being made to the plan at any time if

(i) the beneficiary is not a DTC-eligible individual in respect of the taxation year that includes that time, or
(ii) the beneficiary died before that time;

(e) the plan prohibits a contribution from being made to the plan (other than as a transfer in accordance with subsection (8)) at any time if

Plan
conditions

- (i) the beneficiary attained the age of 59 years before the year that includes that time,
- (ii) the beneficiary is not resident in Canada at that time, or
- (iii) the total of the contribution and all other contributions made (other than as a transfer in accordance with subsection (8)) at or before that time to the plan or to any other registered disability savings plan of the beneficiary would exceed \$200,000;
- (f) the plan prohibits contributions to the plan by any entity that is not a director of the plan, except with written consent of a director of the plan;
- (g) the plan provides that no payments may be made from the plan other than
 - (i) disability assistance payments,
 - (ii) a transfer in accordance with subsection (8), and
 - (iii) repayments under the *Canada Disability Savings Act*;
- (h) the plan prohibits a disability assistance payment from being made if it would result in the fair market value of the property held by the plan trust immediately after the payment being less than the assistance holdback amount in relation to the plan;
- (i) the plan provides for lifetime disability assistance payments to begin to be paid no later than the end of the particular calendar year in which the beneficiary attains 60 years of age or, if the plan is established in or after the particular year, in the calendar year following the calendar year in which the plan is established;
- (j) the plan provides that the total of all lifetime disability assistance payments made in any particular calendar year shall not exceed the amount determined by the formula

$$A/(B + 3 - C) + D$$

where

- A is the fair market value of the property held by the plan trust at the beginning of the particular year (other than annuity contracts held by the plan trust that, at the beginning of the particular year, are not described in paragraph (b) of the definition “qualified investment” in subsection 205(1)),
- B is the life expectancy of the beneficiary, determined for the particular year in connection with the plan,
- C is the age in whole years of the beneficiary at the beginning of the particular year, and
- D is the total of all amounts each of which is
 - (i) a periodic payment under an annuity contract held by the plan trust at the beginning of the year (other than an annuity contract described at the beginning of the year in paragraph (b) of the definition “qualified investment” in subsection 205(1)) that is paid to the plan trust in the year, or
 - (ii) if the periodic payment under such an annuity contract is not made to the plan trust because the plan trust disposed of the right to that payment in the year (other than as a result of the transfer of the annuity contract to another registered disability

savings plan of the beneficiary), a reasonable estimate of that payment on the assumption that the annuity contract had been held throughout the year and no rights under the contract were disposed of in the year;

(k) the plan stipulates whether or not disability assistance payments that are not lifetime disability assistance payments are to be permitted under the plan;

(l) the plan provides that, if the total of all amounts each of which is an amount paid, at or before the end of a particular calendar year, to any registered disability savings plan of the beneficiary under the *Canada Disability Savings Act* exceeds the total of all amounts each of which is a contribution made, at or before the end of the particular calendar year, to any registered disability savings plan of the beneficiary (other than as a transfer in accordance with subsection (8)),

(i) if the beneficiary has not attained the age of 59 years at or before the end of the particular calendar year, the total of all amounts each of which is a disability assistance payment made from the plan to the beneficiary in the calendar year following the particular calendar year shall not exceed the amount determined by the formula in paragraph (j) in respect of the plan for that following year,

(ii) if the beneficiary has attained the age of 27 years, but not the age of 59 years, at or before the end of the particular calendar year, the beneficiary has the right to direct that, within the constraints imposed by subparagraph (i) and paragraph (h), one or more disability assistance payments be made from the plan to the beneficiary in the calendar year following the particular calendar year, and

(iii) if the beneficiary has attained the age of 59 years at or before the end of the particular calendar year, the total of all amounts each of which is a disability assistance payment made from the plan to the beneficiary in the calendar year following the particular calendar year shall equal the amount determined by the formula in paragraph (j) in respect of the plan for that following year (or such lesser amount as is supported by the property of the plan trust);

(m) the plan provides that, at the direction of the directors of the plan, the issuer shall transfer all of the property held by the plan trust (or an amount equal to its value) to another registered disability savings plan of the beneficiary, together with all information in its possession that may reasonably be considered necessary for compliance, in respect of the other plan, with the requirements of this Act and with any conditions and obligations imposed under the *Canada Disability Savings Act*; and

(n) the plan provides for any amounts remaining in the plan (after taking into consideration any repayments under the *Canada Disability Savings Act*) to be paid to the beneficiary or the beneficiary's estate, as the case may be, and for the plan to be terminated, by the end of the calendar year following the earlier of

(i) the calendar year in which the beneficiary dies, and

(ii) the taxation year in respect of which the beneficiary ceases to be a DTC-eligible individual.

Trust not
taxable

(5) No tax is payable under this Part by a trust on the taxable income of the trust for a taxation year if, throughout the period in the year during which the trust was in existence, the trust was governed by a registered disability savings plan, except that

(a) tax is payable under this Part by the trust on its taxable income for the year if the trust has borrowed money

(i) in the year, or

(ii) in a preceding taxation year and has not repaid it before the beginning of the year; and

(b) if the trust is not otherwise taxable under paragraph (a) on its taxable income for the year and, at any time in the year, it carries on one or more businesses or holds one or more properties that are not qualified investments (as defined in subsection 205(1)) for the trust, tax is payable under this Part by the trust on the amount that its taxable income for the year would be if it had no incomes or losses from sources other than those businesses and properties, and no capital gains or losses other than from dispositions of those properties, and for this purpose,

(i) "income" includes dividends described in section 83, and

(ii) paragraphs 38(a) and (b) are to be read as if the fraction set out in each of those paragraphs were replaced by the word "all".

(6) Where a disability assistance payment is made from a registered disability savings plan of a beneficiary, the amount, if any, by which the amount of the payment exceeds the non-taxable portion of the payment shall be included,

(a) if the beneficiary is alive at the time the payment is made, in computing the beneficiary's income for the beneficiary's taxation year in which the payment is made, and

(b) in any other case, in computing the income of the beneficiary's estate for the estate's taxation year in which the payment is made.

(7) The non-taxable portion of a disability assistance payment made at a particular time from a registered disability savings plan of a beneficiary is the lesser of the amount of the disability assistance payment and the amount determined by the formula

$$A \times B/C$$

where

A is the amount of the disability assistance payment,

B is the amount, if any, by which

(a) the total of all amounts each of which is the amount of a contribution made before the particular time to any registered disability savings plan of the beneficiary (other than as a transfer in accordance with subsection (8))

exceeds

Taxation of
disability
assistance
payments

Non-taxable
portion of
disability
assistance
payment

- Transfer of funds
- (b) the total of all amounts each of which is the non-taxable portion of a disability assistance payment made before the particular time from any registered disability savings plan of the beneficiary, and
 - C is the amount by which the fair market value of the property held by the plan trust immediately before the payment exceeds the assistance holdback amount in relation to the plan.
- (8) An amount is transferred from a registered disability savings plan (in this subsection referred to as the “prior plan”) of a beneficiary in accordance with this subsection if
- (a) the amount is transferred directly to another registered disability savings plan (in this subsection referred to as the “new plan”) of the beneficiary;
 - (b) the prior plan is terminated immediately after the transfer;
 - (c) the issuer of the prior plan provides the issuer of the new plan with all information in its possession concerning the prior plan as may reasonably be considered necessary for compliance, in respect of the new plan, with the requirements of this Act and with any conditions and obligations imposed under the *Canada Disability Savings Act*; and
 - (d) if the beneficiary is at least 59 years of age at the beginning of the calendar year in which the transfer occurs, the new plan undertakes to make (in addition to any other disability assistance payments that would otherwise have been made from the new plan in the year) one or more disability assistance payments in the year, the total of which is not less than the amount, if any, by which
 - (i) the amount of lifetime disability assistance payments that would have been made from the prior plan in the year if the transfer had not occurred exceeds
 - (ii) the amount of lifetime disability assistance payments made from the prior plan in the year.
- (9) An amount transferred in accordance with subsection (8) is not, solely because of that transfer, to be included in computing the income of any taxpayer.
- No income inclusion on transfer
- Non-compliance — cessation of registered status
- (10) Where, at any particular time, a registered disability savings plan is non-compliant as described in subsection (11),
 - (a) the plan ceases, as of the particular time, to be a registered disability savings plan (other than for the purposes of applying, as of the particular time, this subsection and subsection (11));
 - (b) a disability assistance payment is deemed to have been made from the plan at the time (in this subsection referred to as the “relevant time”) immediately before the particular time to the beneficiary under the plan (or, if the beneficiary is deceased at the relevant time, to the beneficiary’s estate), the amount of which payment is equal to the amount, if any, by which

- (i) the fair market value of the property held by the plan trust at the relevant time exceeds
- (ii) the assistance holdback amount in relation to the plan; and
- (c) if the plan is non-compliant because of a payment that is not in accordance with paragraph (4)(h), a disability assistance payment is deemed to have been made from the plan at the relevant time (in addition to the payment deemed by paragraph (b) to have been made) to the beneficiary under the plan (or if the beneficiary is at that time deceased, to the beneficiary's estate)
- (i) the amount of which payment is equal to the amount by which the lesser of
 - (A) the assistance holdback amount in relation to the plan, and
 - (B) the fair market value of the property held by the plan trust at the relevant time exceeds
 - (C) the fair market value of the property held by the plan trust immediately after the particular time, and
- (ii) the non-taxable portion of which is deemed to be nil.
- (11) A registered disability savings plan is non-compliant
- (a) at any time that the plan fails to comply with a condition in subsection (4);
 - (b) at any time that there is a failure to administer the plan in accordance with its terms (other than those terms which the plan is required by subparagraph (4)(a)(i) to stipulate); and
 - (c) at any time that a person fails to comply with a condition or an obligation imposed, with respect to the plan, under the *Canada Disability Savings Act*, and the specified Minister has notified the Minister that, in the specified Minister's opinion, it is appropriate that the plan be considered to be non-compliant because of the failure.
- (12) Where a registered disability savings plan would otherwise be non-compliant at a particular time because of a failure described in paragraph (11)(a) or (b),
- (a) the Minister may waive the application of the relevant paragraph with respect to the failure, if it is just and equitable to do so;
 - (b) the Minister may deem the failure to have occurred at a later time;
 - (c) if the failure consists of the making of a contribution that is prohibited under any of paragraphs (4)(d) to (f), an amount equal to the amount of the contribution has been withdrawn from the plan within such period as is specified by the Minister and the Minister has approved the application of this paragraph with respect to the failure,
- (i) the contribution is deemed never to have been made, and

Non-compliance described

Non-application of subsection (11)

- (ii) the withdrawal is deemed not to be a disability assistance payment and not to be in contravention of the condition in paragraph (4)(g); or
- (d) if the failure consists of the plan not being terminated as required under paragraph (4)(n) and was due either to the issuer not being aware of the beneficiary having died or having ceased to be a DTC-eligible individual or to some uncertainty as to the beneficiary having ceased to be a DTC-eligible individual, the Minister may specify a later date by which it is reasonable to assume that the plan can be terminated in an orderly manner and, for the purposes of paragraphs (11)(a) and (b), paragraph (4)(n) and the plan terms are to be read as though they required the plan to be terminated by that date.

Obligations of
issuer

- (13) The issuer of a registered disability savings plan shall,

- (a) where an entity becomes a director of the plan after the plan is entered into, provide notification of the directorship in prescribed form containing prescribed information to the specified Minister on or before the day that is 60 days after the later of
 - (i) the day on which the issuer is advised of the new directorship, and
 - (ii) the day on which the issuer is provided with the Social Insurance Number, or business number, as the case may be, of the new director;
- (b) not amend the plan before having received notification from the Minister that, in the Minister's opinion, a plan the terms of which are identical to the amended plan would, if entered into by entities eligible to enter into a disability savings plan, comply with the conditions in subsection (4);
- (c) where the issuer becomes aware that the plan is, or is likely to become, non-compliant (determined without reference to paragraph (11)(c) and subsection (12)), notify the Minister and the specified Minister of this fact on or before the day that is 30 days after the day on which the issuer becomes so aware; and
- (d) exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that a director of the plan may become liable to pay tax under Part XI in connection with the plan.

15. Subsection 149(1) of the Act is amended by adding the following after paragraph (u):

Trusts under
registered
disability
savings plans

- (u.1) a trust governed by a registered disability savings plan to the extent provided by section 146.4;

16. Subsection 153(1) of the Act is amended by adding the following after paragraph (h):

- (i) a payment from a registered disability savings plan,

17. (1) Section 160.2 of the Act is amended by adding the following after subsection (2.2):

Joint and
several
liability —
registered
disability
savings plan

(2.3) Where, in computing income for a taxation year, a taxpayer is required to include an amount in respect of a disability assistance payment (as defined in subsection 146.4(1)) that is deemed by subsection 146.4(10) to have been made at any particular time from a registered disability savings plan, the taxpayer and each director (as defined in subsection 146.4(1)) of the plan immediately after the particular time are jointly and severally, or solidarily, liable to pay the part of the taxpayer's tax under this Part for that taxation year that is equal to the amount, if any, determined by the formula

$$A - B$$

where

- A is the amount of the taxpayer's tax under this Part for that taxation year, and
- B is the amount that would be the taxpayer's tax under this Part for that taxation year if no disability assistance payment were deemed by subsection 146.4(10) to have been paid from the plan at the particular time.

No limitation
on liability

(2.4) Subsection (2.3) limits neither

- (a) the liability of the taxpayer referred to in that subsection under any other provision of this Act; nor
- (b) the liability of any director referred to in that subsection for the interest that the director is liable to pay under this Act on an assessment in respect of the amount that the director is liable to pay because of that subsection.

(2) Section 160.2 of the Act is amended by adding the following after subsection (5):

Rules
applicable —
registered
disability
savings plans

(6) Where a director (as defined in subsection 146.4(1)) of a registered disability savings plan has, because of subsection (2.3), become jointly and severally, or solidarily, liable with a taxpayer in respect of part or all of a liability of the taxpayer under this Act, the following rules apply:

- (a) a payment by the director on account of the director's liability shall to the extent of the payment discharge the director's liability, but
- (b) a payment by the taxpayer on account of the taxpayer's liability only discharges the director's liability to the extent that the payment operates to reduce the taxpayer's liability to an amount less than the amount in respect of which the director was, by subsection (2.3), made liable.

18. The definition “adjusted income” in subsection 180.2(1) of the Act is replaced by the following:

“adjusted
income”
« revenu
modifié »

“adjusted income” of an individual for a taxation year means the amount that would be the individual's income under Part I for the year if no amount were included under paragraph 56(1)(q.1) or subsection 56(6) or in respect of a gain from a disposition of property to which section 79 applies in computing that income and if no amount were deductible under paragraph 60(w), (y) or (z) in computing that income;

19. The Act is amended by adding the following after section 204.94:

PART XI

TAXES IN RESPECT OF REGISTERED DISABILITY SAVINGS PLANS

Definitions

“advantage”
« avantage »

205. (1) The following definitions apply in this Part.

“advantage”, in relation to a registered disability savings plan, means any benefit or loan that is conditional in any way on the existence of the plan other than

- (a) a disability assistance payment;
- (b) a contribution made by, or with the written consent of, a director of the plan;
- (c) a transfer in accordance with subsection 146.4(8);
- (d) an amount paid under the *Canada Disability Savings Act*;
- (e) a benefit derived from the provision of administrative or investment services in respect of the plan; or
- (f) a loan
 - (i) made in the ordinary course of the lender's ordinary business of lending money if, at the time the loan was made, *bona fide* arrangements were made for repayment of the loan within a reasonable time, and
 - (ii) the sole purpose of which was to enable a person to make a contribution to the plan.

“allowable refund”
« remboursement admissible »

“allowable refund” of a person for a calendar year means the total of all amounts each of which is a refund to which the person is entitled under subsection 206.1(4) for the year.

“benefit”
« bénéfice »

“benefit”, in relation to a registered disability savings plan, includes any payment or allocation of an amount to the plan that is represented to be a return on investment in respect of property held by the plan trust, but which cannot reasonably be considered, having regard to all the circumstances, to be on terms and conditions that would apply to a similar transaction in an open market between parties dealing with each other at arm's length and acting prudently, knowledgeably and willingly.

“qualified investment”
« placement admissible »

“qualified investment” for a trust governed by a registered disability savings plan means

- (a) an investment that would be described by any of paragraphs (a) to (d), (f) and (g) of the definition “qualified investment” in section 204 if the reference in that definition to “a trust governed by a deferred profit sharing plan or revoked plan” were read as a reference to “a trust governed by a registered disability savings plan” and if that definition were read without reference to the words “with the exception of excluded property in relation to the trust”;
- (b) a contract for an annuity issued by a licensed annuities provider where

- (i) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract, and
 - (ii) the holder of the contract has a right to surrender the contract at any time for an amount that would, if reasonable sales and administration charges were ignored, approximate the value of funds that could otherwise be applied to fund future periodic payments under the contract;
- (c) a contract for an annuity issued by a licensed annuities provider where
- (i) annual or more frequent periodic payments are or may be made under the contract to the holder of the contract,
 - (ii) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract,
 - (iii) neither the time nor the amount of any payment under the contract may vary because of the length of any life, other than the life of the beneficiary under the plan,
 - (iv) the day on which the periodic payments began or are to begin is not later than the end of the later of
 - (A) the year in which the beneficiary under the plan attains 60 years of age, and
 - (B) the year following the year in which the contract was acquired by the trust,
 - (v) the periodic payments are payable for the life of the beneficiary under the plan and either there is no guaranteed period under the contract or there is a guaranteed period that does not exceed 15 years,
 - (vi) the periodic payments
 - (A) are equal, or
 - (B) are not equal solely because of one or more adjustments that would, if the contract were an annuity under a retirement savings plan, be in accordance with subparagraphs 146(3)(b)(iii) to (v) or that arise because of a uniform reduction in the entitlement to the periodic payments as a consequence of a partial surrender of rights to the periodic payments, and
 - (vii) the contract requires that, in the event the plan must be terminated in accordance with paragraph 146.4(4)(n), any amounts that would otherwise be payable after the termination be commuted into a single payment; and
- (d) a prescribed investment.

(2) The definitions in subsection 146.4(1) apply in this Part.

206. (1) A tax is payable under this Part for a calendar year in connection with a registered disability savings plan if, in the year, a trust governed by the plan

Definitions in subsection 146.4(1)

Tax payable where inadequate consideration

	(a) disposes of property for consideration less than the fair market value of the property at the time of the disposition, or for no consideration; or
	(b) acquires property for consideration greater than the fair market value of the property at the time of the acquisition.
Amount of tax payable	<p>(2) The amount of tax payable in respect of each acquisition or disposition described in subsection (1) is</p> <ul style="list-style-type: none"> (a) the amount by which the fair market value differs from the consideration; or (b) if there is no consideration, the amount of the fair market value.
Liability for tax	(3) Each person who is a director of a registered disability savings plan at the time that a tax is imposed under subsection (1) in connection with the plan is jointly and severally, or solidarily, liable to pay the tax.
Payment of amount collected to RDSP	<p>(4) Where a tax has been imposed under subsection (1) in connection with a registered disability savings plan of a beneficiary, the Minister may pay all or part of any amount collected in respect of the tax to a trust governed by a registered disability savings plan of the beneficiary (referred to in this subsection as the “current plan”) if</p> <ul style="list-style-type: none"> (a) it is just and equitable to do so having regard to all circumstances; and (b) the Minister is satisfied that neither the beneficiary nor any existing director of the current plan was involved in the transaction that gave rise to the tax.
Deemed not to be contribution	(5) A payment under subsection (4) is deemed not to be a contribution to a registered disability savings plan for the purposes of section 146.4.
Tax payable on non-qualified investment	<p>206.1. (1) A tax is payable under this Part for a calendar year in connection with a registered disability savings plan if, in the year,</p> <ul style="list-style-type: none"> (a) the trust governed by the plan acquires property that is not a qualified investment for the trust; or (b) property held by the trust governed by the plan ceases to be a qualified investment for the trust. <p>(2) The amount of tax payable,</p> <ul style="list-style-type: none"> (a) in respect of each property described in paragraph (1)(a), is 50 per cent of the fair market value of the property at the time it was acquired by the trust; and (b) in respect of each property described in paragraph (1)(b), is 50 per cent of the fair market value of the property at the time immediately before the time it ceased to be a qualified investment for the trust. <p>(3) Each person who is a director of a registered disability savings plan at the time that a tax is imposed under subsection (1) in connection with the plan is jointly and severally, or solidarily, liable to pay the tax.</p>

Refund of tax on disposition of non-qualified investment	<p>(4) Where in a calendar year a trust governed by a registered disability savings plan disposes of a property in respect of which a tax is imposed under subsection (1), the person or persons who are liable to pay the tax are entitled to a refund for the year of an amount equal to</p> <ul style="list-style-type: none"> (a) except where paragraph (b) applies, the lesser of <ul style="list-style-type: none"> (i) the amount of the tax so imposed, and (ii) the proceeds of disposition of the property; and (b) nil, <ul style="list-style-type: none"> (i) if it is reasonable to expect that any of those persons knew or ought to have known at the time the property was acquired by the trust that it was not, or would cease to be, a qualified investment for the trust, or (ii) if the property is not disposed of by the trust before the end of the calendar year following the calendar year in which the tax arose, or any later time that the Minister considers reasonable in the circumstances.
Apportionment of refund	<p>(5) Where more than one person is entitled to a refund under subsection (4) for a calendar year in respect of the disposition of a property, the total of all amounts so refundable shall not exceed the amount that would be so refundable for the year to any one of those persons in respect of that disposition if that person were the only person entitled to a refund for the year under that subsection in respect of the disposition. If the persons cannot agree as to what portion of the refund each can so claim, the Minister may fix the portions.</p>
Deemed disposition and reacquisition	<p>(6) For the purposes of this Act, where at any time property held by a plan trust in respect of which a tax was imposed under subsection (1) subsequently becomes a qualified investment for the trust, the trust is deemed to have disposed of the property at that time for proceeds of disposition equal to its fair market value at that time and to have reacquired it immediately after that time at a cost equal to that fair market value.</p>
Tax payable where advantage extended	<p>206.2 (1) A tax is payable under this Part for a calendar year in connection with a registered disability savings plan if, in the year, an advantage in relation to the plan is extended to a person who is, or who does not deal at arm's length with, a beneficiary under, or a director of, the plan.</p>
Amount of tax payable	<p>(2) The amount of tax payable in respect of an advantage described in subsection (1) is</p> <ul style="list-style-type: none"> (a) in the case of a benefit, the fair market value of the benefit; and (b) in the case of a loan, the amount of the loan.
Liability for tax	<p>(3) Each person who is a director of a registered disability savings plan at the time that a tax is imposed under subsection (1) in connection with the plan is jointly and severally, or solidarily, liable to pay the tax. If, however, the advantage is extended by the issuer of the plan or by a person not dealing at arm's length with the issuer, the issuer is liable to pay the tax and not the directors.</p>

Tax payable on use of property as security	206.3 (1) Every issuer of a registered disability savings plan shall pay a tax under this Part for a calendar year if, in the year, with the consent or knowledge of the issuer, a trust governed by the plan uses or permits to be used any property held by the trust as security for indebtedness of any kind.
Amount of tax payable	(2) The amount of tax payable in respect of each property described in subsection (1) is equal to the fair market value of the property at the time the property commenced to be used as security.
Waiver of liability	206.4 If a person would otherwise be liable to pay a tax under this Part for a calendar year, the Minister may waive or cancel all or part of the liability where it is just and equitable to do so having regard to all the circumstances, including <ul style="list-style-type: none"> (a) whether the tax arose as a consequence of reasonable error; and (b) the extent to which the transaction which gave rise to the tax also gave rise to another tax under this Part.
Return and payment of tax	207. (1) Every person who is liable to pay tax under this Part for a calendar year shall within 90 days after the end of the year <ul style="list-style-type: none"> (a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information including <ul style="list-style-type: none"> (i) an estimate of the amount of tax payable under this Part by the person for the year, and (ii) an estimate of the amount of any refund to which the person is entitled under this Part for the year; and (b) pay to the Receiver General the amount, if any, by which the amount of the person's tax payable under this Part for the year exceeds the person's allowable refund for the year.
Refund	(2) Where a person has filed a return under this Part for a calendar year within three years after the end of the year, the Minister <ul style="list-style-type: none"> (a) may, on mailing the notice of assessment for the year, refund without application any allowable refund of the person for the year, to the extent that it was not applied against the person's tax payable pursuant to paragraph (1)(b); and (b) shall, with all due dispatch, make the refund referred to in paragraph (a) after mailing the notice of assessment if an application for it has been made in writing by the person within three years after the mailing of an original notice of assessment for the year.
Multiple directors	(3) Where two or more directors of a registered disability savings plan are jointly and severally, or solidarily, liable with each other to pay a tax under this Part for a calendar year in connection with the plan, <ul style="list-style-type: none"> (a) a payment by any of the directors on account of that tax liability shall to the extent of the payment discharge the joint liability; and

(b) a return filed by one of the directors as required by this Part for the year is deemed to have been filed by each other director in respect of the joint liability to which the return relates.

Provisions applicable to Part

(4) Subsections 150(2) and (3), sections 152 and 158 to 167 and Division J of Part I apply to this Part with any modifications that the circumstances require.

20. Subsection 212(1) of the Act is amended by adding the following after paragraph (r):

(r.*I*) an amount that would, if the non-resident person had been resident in Canada throughout the taxation year in which the amount was paid, be required by paragraph 56(1)(*q.I*) to be included in computing the non-resident person's income for the taxation year;

21. Paragraph 241(4)(d) of the Act is amended by adding the following after subparagraph (vii.4):

(vii.5) to an official solely for the purpose of the administration and enforcement of the *Canada Disability Savings Act*,

22. (1) Subparagraph (f)(vi) of the definition “disposition” in subsection 248(1) of the Act is replaced by the following:

(vi) if the transferor is an amateur athlete trust, a cemetery care trust, an employee trust, an inter vivos trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, a related segregated fund trust (in this paragraph having the meaning assigned by section 138.1), a trust described in paragraph 149(1)(*o.4*) or a trust governed by an eligible funeral arrangement, an employees profit sharing plan, a registered disability savings plan, a registered education savings plan or a registered supplementary unemployment benefit plan, the transferee is the same type of trust, and

(2) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

“registered disability savings plan”
« régime enregistré d'épargne-invalidité »

“registered disability savings plan” has the meaning assigned by subsection 146.4(1);

23. Section 253.1 of the Act is replaced by the following:

Investments in limited partnerships

253.1 For the purposes of subparagraph 108(2)(b)(ii), paragraphs 130.1(6)(b), 131(8)(b), 132(6)(b), 146.1(2.1)(c), 146.4(5)(b) and 149(1)(*o.2*), the definition “private holding corporation” in subsection 191(1) and regulations made for the purposes of paragraphs 149(1)(*o.3*) and (*o.4*), if a trust or corporation holds an interest as a member of a partnership and, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited, the member

shall not, solely because of its acquisition and holding of that interest, be considered to carry on any business or other activity of the partnership.

INCOME TAX REGULATIONS

24. Subsection 221(2) of the *Income Tax Regulations* is replaced by the following:

(2) Where in any taxation year a reporting person (other than a registered investment) claims that a share of its capital stock issued by it, or an interest as a beneficiary under it, is a qualified investment under section 146, 146.1, 146.3, 204 or 205 of the Act, the reporting person shall, in respect of the year and within 90 days after the end of the year, make an information return in prescribed form.

25. (1) The portion of subsection 4900(1) of the Regulations before paragraph (a) is replaced by the following:

4900. (1) For the purposes of paragraph (d) of the definition “qualified investment” in subsection 146(1) of the Act, paragraph (e) of the definition “qualified investment” in subsection 146.1(1) of the Act, paragraph (c) of the definition “qualified investment” in subsection 146.3(1) of the Act, paragraph (h) of the definition “qualified investment” in section 204 of the Act and paragraph (d) of the definition “qualified investment” in subsection 205(1) of the Act, each of the following investments is prescribed as a qualified investment for a plan trust at a particular time if at that time it is

(2) Paragraph 4900(1)(c) of the Regulations is replaced by the following:

(c) a share of the capital stock of a mortgage investment corporation that does not hold as part of its property at any time during the calendar year in which the particular time occurs any indebtedness, whether by way of mortgage or otherwise, of a person who is a connected person under the governing plan of the plan trust;

(3) Subparagraph 4900(1)(e)(ii) of the Regulations is replaced by the following:

(ii) the issuer is not a connected person under the governing plan of the plan trust;

(4) The portion of paragraph 4900(1)(g) of the Regulations before subparagraph (i) is replaced by the following:

(g) a bond, debenture, note or similar obligation (in this paragraph referred to as the “obligation”) issued by, or a deposit with, a credit union that, except where the plan trust is governed by a registered education savings plan, has not at any time during the calendar year in which the particular time occurs granted any benefit or privilege to a person who is a connected person under the governing plan of the plan trust, as a result of the ownership by

(5) The portion of subparagraph 4900(1)(h)(iii) of the Regulations before clause (A) is replaced by the following:

(iii) that, except where the plan trust is governed by a registered education savings plan, has not at any time during the calendar year in which the particular time occurs

granted any benefit or privilege to a person who is a connected person under the governing plan of the plan trust, as a result of the ownership by

(6) Paragraph 4900(1)(i.2) of the Regulations is replaced by the following:

(i.2) indebtedness of a Canadian corporation (other than a corporation that is a connected person under the governing plan of the plan trust) represented by a bankers' acceptance;

(7) Subparagraph 4900(1)(j)(ii) of the Regulations is replaced by the following:

(ii) the debtor (and any partnership that does not deal at arm's length with the debtor) is not a connected person under the governing plan of the plan trust;

(8) The portion of paragraph 4900(1)(q) of the Regulations before subparagraph (i) is replaced by the following:

(q) a debt issued by a Canadian corporation (other than a corporation with share capital or a corporation that is a connected person under the governing plan of the plan trust) where

(9) The portion of paragraph 4900(1)(r) of the Regulations before subparagraph (i) is replaced by the following:

(r) a debt issued by a Canadian corporation (other than a corporation with share capital or a corporation that is a connected person under the governing plan of the plan trust) if

(10) Subsection 4900(5) of the Regulations is replaced by the following:

(5) For the purposes of paragraph (e) of the definition "qualified investment" in subsection 146.1(1) of the Act and paragraph (d) of the definition "qualified investment" in subsection 205(1) of the Act, a property is prescribed as a qualified investment for a trust governed by a registered education savings plan or a trust governed by a registered disability savings plan at any time if at that time the property is an interest in a trust or a share of the capital stock of a corporation that was a registered investment for a trust governed by a registered retirement savings plan during the calendar year in which that time occurs or during the preceding year.

26. (1) The definition "governing plan" in subsection 4901(2) of the Regulations is replaced by the following:

"governing plan"
"régime d'encadrement" » means a registered retirement savings plan, a registered education savings plan, a registered retirement income fund, a registered disability savings plan, a deferred profit sharing plan or a revoked plan;

(2) Subsection 4901(2) of the Regulations is amended by adding the following in alphabetical order:

"connected person", in relation to a governing plan of a plan trust, means a person who is an annuitant, a beneficiary, an employer or a subscriber under, or a director of, the governing plan and any person who does not deal at arms's length with that person.

"connected person"
"personne rattachée" »

CONSEQUENTIAL AMENDMENTS
Employment Insurance Act

27. The definition “income” in section 144 of the *Employment Insurance Act* is replaced by the following:

“income” of a person for a period means the amount that would be their income for the period determined under the *Income Tax Act* if no amount were

- (a) deductible under paragraphs 60(v.1), (w), (y) and (z) of that Act,
- (b) included in respect of a gain from a disposition of property to which section 79 of that Act applies, or
- (c) included under paragraph 56(1)(q.1) or subsection 56(6) of that Act;

Old Age Security Act

28. Paragraph (e) of the definition “income” in section 2 of the *Old Age Security Act* is replaced by the following:

- (e) there shall be deducted from the person’s income for the year any amount included under paragraph 56(1)(q.1) or subsection 56(6) of the *Income Tax Act* and there shall be included in the person’s income for the year any amount that may be deducted under paragraph 60(y) or (z) of that Act;

COMING INTO FORCE

29. This Part applies to the 2008 and subsequent taxation years, except that section 1 also applies to the 2007 taxation year.

PART 2
DISABILITY SAVINGS

ENACTMENT OF ACT

Enactment of
Act

30. The *Canada Disability Savings Act* is enacted as follows:

An Act to encourage savings for persons with disabilities

SHORT TITLE

Short title

1. *Canada Disability Savings Act.*

INTERPRETATION

Definitions

2. (1) The following definitions apply in this Act.

“Canada Disability Savings Bond” « bon canadien pour l'épargne-invalidité »	“Canada Disability Savings Bond” means the bond payable or paid under section 7.
“Canada Disability Savings Grant” « subvention canadienne pour l'épargne-invalidité »	“Canada Disability Savings Grant” means the grant payable or paid under section 6.
“contribution” « cotisation »	“contribution” means any amount paid by the director or by a third party, with the written consent of the director, into the registered disability savings plan of a beneficiary in accordance with section 146.4 of the <i>Income Tax Act</i> .
“goods and services tax credit” « crédit de taxe sur les produits et services »	“goods and services tax credit” means the amount that is deemed to have been paid under section 122.5 of the <i>Income Tax Act</i> .
“month specified” « mois déterminé »	“month specified” means the month referred to in subsection 122.5(4) of the <i>Income Tax Act</i> .
<i>Income Tax Act</i> expressions	<p>(2) Unless a contrary intention appears, in this Act</p> <ul style="list-style-type: none"> (a) the expressions “adjusted income”, “eligible individual” and “qualified dependant” have the meanings assigned by section 122.5 of the <i>Income Tax Act</i>; (b) the expressions “director”, “issuer” and “registered disability savings plan” have the meanings assigned by section 146.4 of the <i>Income Tax Act</i>; and (c) any other expression has the meaning assigned by the <i>Income Tax Act</i>.
Purpose	PURPOSE
Informing Canadians	<p>3. The purpose of this Act is to encourage long term savings through registered disability savings plans to provide for the financial security of persons with severe and prolonged impairments in physical or mental functions.</p> <p>4. The Minister may take any measures that the Minister considers appropriate to make known to Canadians the existence of Canada Disability Savings Grants and Canada Disability Savings Bonds.</p>

Power of
Governor in
Council

Canada
Disability
Savings Grants

Amount of
grant

No determina-
tion for
January

Beneficiary
born after
September 30

Indexing

Lifetime cap

Canada
Disability
Savings Bonds

DESIGNATION OF MINISTER

5. The Governor in Council may, by order, designate a minister of the Crown to be “the Minister” referred to in this Act.

PAYMENTS

6. (1) Subject to this Act and the regulations, on application, the Minister may, in respect of any contribution made to a registered disability savings plan of a beneficiary, pay a Canada Disability Savings Grant into the plan. The grant is to be paid on any terms and conditions that the Minister may specify by agreement between the Minister and the issuer of the plan.

(2) The amount of a Canada Disability Savings Grant that may be paid for a particular year is equal to

(a) 300% of the part of the total contributions made in the year that is not more than \$500, and 200% of the part of those contributions that is more than \$500 but that is less than or equal to \$1,500, if the beneficiary is

(i) an eligible individual whose adjusted income used to determine the amount of the goods and services tax credit in respect of January in the particular year is equal to or less than \$74,357,

(ii) a qualified dependant of the eligible individual referred to in subparagraph (i), or

(iii) a person in respect of whom a special allowance under the *Children’s Special Allowances Act* is payable for at least one month in the particular year; or

(b) 100% of total the contributions made in the year, up to a maximum of \$1,000, in any other case.

(3) If there has been no determination of eligibility for a goods and services tax credit in respect of January in a particular year, the adjusted income to be used for the purposes of paragraph (2)(a) is the adjusted income used to determine the amount of a goods and services tax credit for the first month specified in the particular year in respect of which eligibility has been established.

(4) In applying subsection (3) in respect of a beneficiary born after September 30 in a particular year, the reference to “the first month specified in the particular year in respect of which eligibility has been established” in that subsection is to be read as a reference to “January of the next year”.

(5) The amount of \$74,357 referred to in subparagraph (2)(a)(i) is to be adjusted, as set out in section 117.1 of the *Income Tax Act*, for each year after 2007.

(6) Not more than \$70,000 in Canada Disability Savings Grants may be paid in respect of a beneficiary during their lifetime.

7. (1) Subject to this Act and the regulations, on application, the Minister may pay a Canada Disability Savings Bond into a registered disability savings plan of a beneficiary. The bond is to be paid on any terms and conditions that the Minister may specify by agreement between the Minister and the issuer of the plan.

Amount of bond	<p>(2) The amount of a Canada Disability Savings Bond payable for a particular year is</p> <p>(a) \$1,000, if the beneficiary is</p> <ul style="list-style-type: none"> (i) an eligible individual whose adjusted income used to determine the amount of the goods and services tax credit in respect of January in the particular year is equal to or less than \$20,883, (ii) a qualified dependant of the eligible individual referred to in subparagraph (i), or (iii) a person in respect of whom a special allowance under the <i>Children's Special Allowances Act</i> is payable for at least one month in the particular year; or <p>(b) the amount determined by the formula set out in subsection (3), if the beneficiary is</p> <ul style="list-style-type: none"> (i) an eligible individual whose adjusted income used to determine the amount of the goods and services tax credit in respect of January in the particular year is between \$20,883 and \$37,178, or (ii) a qualified dependant of the eligible individual referred to in subparagraph (i). <p>(3) For the purposes of paragraph (2)(b), the formula is as follows:</p> $\$1,000 - [\$1,000 \times (A - B) / (C - B)]$ <p>where</p> <p>A is the adjusted income for the year;</p> <p>B is \$20,883; and</p> <p>C is \$37,178.</p>
Rounding of amounts	<p>(4) If an amount calculated under subsection (3) contains a fraction of a cent, the amount is to be rounded to the nearest whole cent or, if the amount is equidistant from two whole cents, to the higher of them.</p>
No determination for January	<p>(5) If there has been no determination of eligibility for a goods and services tax credit in respect of January in a particular year, the adjusted income to be used for the purposes of subsection (2) is the adjusted income used to determine the amount of a goods and services tax credit for the first month specified in the particular year in respect of which eligibility has been established.</p>
Beneficiary born after September 30	<p>(6) In applying subsection (5) in respect of a beneficiary born after September 30 in a particular year, the reference to "the first month specified in the particular year in respect of which eligibility has been established" in that subsection is to be read as a reference to "January of the next year".</p>
Indexing	<p>(7) The amounts of \$20,883 and \$37,178 referred to in subsections (2) and (3) are to be adjusted, as set out in section 117.1 of the <i>Income Tax Act</i>, for each year after 2007.</p>
Lifetime cap	<p>(8) Not more than \$20,000 in Canada Disability Savings Bonds may be paid in respect of a beneficiary during their lifetime.</p>

Conditions of payment	<p>8. Neither a Canada Disability Savings Grant nor a Canada Disability Savings Bond may be paid unless</p> <ul style="list-style-type: none"> (a) the Minister is provided with, as the case may be, (i) the Social Insurance Number of the beneficiary, (ii) the Social Insurance Number of the eligible individual referred to in subparagraph 6(2)(a)(ii) or 7(2)(a)(ii), and (iii) the business number of the department, agency or institution that maintains the beneficiary in respect of whom a special allowance is payable under the <i>Children's Special Allowances Act</i> for a month in the particular year; and <p>(b) the beneficiary is resident in Canada, in the case of a Canada Disability Savings Grant, at the time the contribution to the plan is made and, in the case of a Canada Disability Savings Bond, immediately before the payment is made.</p>
Interest	<p>9. The Minister may, in prescribed circumstances, pay interest, determined in accordance with prescribed rules, in respect of Canada Disability Savings Grants or Canada Disability Savings Bonds.</p>
Payments out of CRF	<p>10. All amounts payable by the Minister under this Act shall be paid out of the Consolidated Revenue Fund.</p>
Waiver	<p>11. (1) On application made by the director, to avoid undue hardship, the Minister may waive, as specified in the regulations, any of the requirements of this Act or the regulations that relate to the payment or repayment of Canada Disability Savings Grants or Canada Disability Savings Bonds. The application must be in the form and manner approved by the Minister.</p>
Restriction	<p>(2) Despite subsection (1), the Minister may not waive any requirement related to the determination of eligibility for</p> <ul style="list-style-type: none"> (a) a goods and services tax credit; (b) a credit for mental or physical impairment that is provided for by section 118.3 of the <i>Income Tax Act</i>; or (c) a special allowance under the <i>Children's Special Allowances Act</i>.
	GENERAL
Recovery of payments and interest	<p>12. An amount required to be repaid to the Minister under this Act, the regulations or an agreement entered into under this Act and any interest due in respect of the amount constitute a debt due to Her Majesty in right of Canada and are recoverable as such in the Federal Court or any other court of competent jurisdiction by the Minister of National Revenue.</p>
Limitation period	<p>13. (1) Subject to this section, no action or proceedings shall be taken to recover money owing under this Act after the expiry of the six-year limitation period that begins on the day on which the Minister issues a written notice to the debtor indicating the amount due.</p>

Deduction and set-off	(2) Money owing by a person under this Act may be recovered at any time by way of deduction from, set-off against or, in Quebec, compensation against, any sum of money that may be due or payable by Her Majesty in right of Canada to the person, other than an amount payable under section 122.61 of the <i>Income Tax Act</i> .
Deduction and set-off	(3) Money owing by a person under this Act may be recovered by the Minister at any time by way of deduction from, set-off against or, in Quebec, compensation against, any sum of money that may be due or payable under this Act to the person.
Acknowledgment of liability	(4) If a person's liability for money owing under this Act is acknowledged in accordance with subsection (6), the time during which the limitation period has run before the acknowledgment does not count in the calculation of that period.
Acknowledgment after expiry of limitation period	(5) If a person's liability for money owing under this Act is acknowledged in accordance with subsection (6) after the expiry of the limitation period, an action or proceedings to recover the money may, subject to subsections (4) and (7), be brought within six years after the day on which the acknowledgment is made.
Types of acknowledgments	<p>(6) An acknowledgment of liability means</p> <ul style="list-style-type: none"> (a) a written promise to pay the money owing, signed by the person or his or her agent or other representative; (b) a written acknowledgment of the money owing, signed by the person or his or her agent or other representative, whether or not a promise to pay can be implied from it and whether or not it contains a refusal to pay; (c) a part payment by the person or his or her agent or other representative of any money owing; or (d) any acknowledgment of the money owing made by the person, his or her agent or other representative or the trustee or administrator in the course of proceedings under the <i>Bankruptcy and Insolvency Act</i> or any other legislation dealing with the payment of debts.
Limitation period suspended	(7) The running of a limitation period in respect of money owing under this Act is suspended during any period in which it is prohibited to commence or continue an action or other proceedings against the person to recover money owing under this Act.
Enforcement proceedings	(8) This section does not apply in respect of an action or proceedings relating to the execution, renewal or enforcement of a judgment.
Collection of information	14. If the Minister considers it advisable, the Minister may, subject to conditions agreed on by the Minister and the Minister of National Revenue, collect any prescribed information for the administration of section 146.4 of the <i>Income Tax Act</i> and Part XI of that Act.
Regulations	15. The Governor in Council may make regulations for carrying out the purpose and provisions of this Act and, without limiting the generality of the foregoing, may make regulations

- (a) respecting any matter or thing that by this Act is to be or may be prescribed or otherwise determined under the regulations;
- (b) establishing conditions that must be met by a registered disability savings plan and by persons in respect of the plan before a Canada Disability Savings Grant or a Canada Disability Savings Bond may be paid in respect of the plan;
- (c) establishing the manner of determining the amount of a Canada Disability Savings Grant that may be paid in respect of contributions made to registered disability savings plans or the amount of a Canada Disability Savings Bond that may be paid into those plans;
- (d) specifying terms and conditions to be included in agreements entered into between an issuer of a registered disability savings plan and the Minister relating to the terms and conditions applicable to the payment of a Canada Disability Savings Grant or a Canada Disability Savings Bond and specifying, for inclusion in the agreements, in addition to any other conditions that the Minister considers appropriate, the obligations of an issuer of a plan under an agreement;
- (e) specifying the requirements of this Act or the regulations relating to the payment or repayment of Canada Disability Savings Grants or Canada Disability Savings Bonds that may be waived by the Minister to avoid undue hardship;
- (f) specifying the circumstances under which all or part of any amount paid under this Act is to be repaid to the Minister;
- (g) specifying the circumstances under which the earnings generated on Canada Disability Savings Grants and Canada Disability Savings Bonds repaid under regulations made under paragraph (f) are to be repaid to the Minister and establishing the manner of determining the amount of those earnings;
- (h) specifying information that the Minister may collect for the administration of the *Income Tax Act*; and
- (i) requiring issuers to keep any record, book or other document containing any information relevant to the administration or enforcement of this Act or the regulations, and respecting where, how and how long they are to be kept.

CONSEQUENTIAL AMENDMENT

Children's Special Allowances Act

1992, c. 48.
Sch.

2004, c. 26,
s. 18

Release of
information

31. Subsection 10(2) of the *Children's Special Allowances Act* is replaced by the following:

- (2) Any information obtained by or on behalf of the Minister in the course of the administration or enforcement of this Act or the regulations or the carrying out of an agreement entered into under section 11 may be communicated to any person if it can reasonably be regarded as necessary for the purposes of the administration or enforcement of this Act, the

Income Tax Act, the Canada Disability Savings Act or the Canada Education Savings Act or a program administered under an agreement entered into under section 12 of that Act.

COMING INTO FORCE

Order in
council

32. This Part comes into force on a day to be fixed by order of the Governor in Council.

Explanatory Notes Relating to Income Tax

Preface

These explanatory notes describe proposed amendments to the *Income Tax Act*, the *Income Tax Regulations*, the *Employment Insurance Act* and the *Old Age Security Act* relating to registered disability savings plans. These explanatory notes describe these amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable James. M. Flaherty, P.C., M.P.
Minister of Finance

These explanatory notes are provided to assist in an understanding of the proposed amendments to which they relate. These notes are intended for information purposes and should not be construed as an official interpretation of the provisions they describe.

Income Tax Act

Clause 1

Income or Loss from a Source or from Sources in a Place – Deductions Applicable

ITA

4(3)(a)

Subsection 4(2) of the *Income Tax Act* provides that, in determining the income or loss from a source, no deductions are permitted under sections 60 to 64 of the Act. Subsection 4(3) provides that this rule does not apply, with the exception of certain deductions, in determining the foreign source income designated by a trust to a beneficiary under subsections 104(22) and 104(22.1), in determining a taxpayer's taxable income earned in Canada under section 115 and in determining a taxpayer's foreign tax credit under section 126 of the Act. The exceptions are for deductions permitted by paragraphs 60(b) to (o), (p), (r) and (v) to (x).

Paragraph 4(3)(a) is amended to expand the list of exceptions to include deductions permitted by existing paragraph 60(y) (repayment of amounts under the *Universal Child Care Benefit Act*) and proposed new paragraph 60(z) (repayment of amounts under the *Canada Disability Savings Act*).

This amendment applies to the 2007 and subsequent taxation years.

Clause 2

Deductions – Limitation

ITA

18(11)

Subsection 18(11) of the Act prohibits the deduction of interest on money borrowed to make a contribution to a registered retirement savings plan (RRSP) or certain other deferred income plans.

Subsection 18(11) is amended to extend the prohibition on interest deductibility so that it applies to money borrowed to make a contribution to a registered disability savings plan.

This amendment applies to the 2008 and subsequent taxation years.

Clause 3

Gains and Losses – Limitations

ITA

40(2)(g)

Subparagraph 40(2)(g)(iv) of the Act denies a capital loss arising from the disposition of property by a taxpayer to a trust governed by an RRSP or certain other deferred income plans under which the taxpayer is the annuitant or a beneficiary.

Clause 40(2)(g)(iv)(A) is amended to extend the stop-loss rule so that it applies to the disposition of property by a taxpayer to a trust governed by a registered disability savings plan under which the taxpayer is the beneficiary.

This amendment applies to the 2008 and subsequent taxation years.

Clause 4**Amounts to be Included in Income for Year – Registered Disability Savings Plan Payments**

ITA

56(1)(q.1)

Subsection 56(1) of the Act requires that certain amounts be included in computing income.

New paragraph 56(1)(q.1) requires that amounts relating to a registered disability savings plan be included in computing a taxpayer's income to the extent required by section 146.4 of the Act. Subsection 146.4(6) provides for an income inclusion for the taxable portion of a disability assistance payment made from a registered disability savings plan. For more details, refer to the commentary on new subsections 146.4(6) and (7).

This amendment applies to the 2008 and subsequent taxation years.

Clause 5**Deductions in Computing Income – Repayment under Canada Disability Savings Act**

ITA

60(z)

Section 60 of the Act provides for various deductions in computing income.

New paragraph 60(z) provides for a deduction for an amount repaid by a taxpayer under the *Canada Disability Savings Act* to the extent that the amount was previously included in the taxpayer's income because of section 146.4 of the *Income Tax Act*.

This amendment applies to the 2008 and subsequent taxation years.

Clause 6**Attribution Rules – Where Sections 74.1 to 74.3 do not apply**

ITA

74.5(12)

Sections 74.1 to 74.5 of the Act provide attribution rules in respect of property transferred by an individual to the individual's spouse or common-law partner or to certain other individuals under the age of 18 years. Subsection 74.5(12) provides several exceptions from these rules, including an exception for a transfer of property made by way of a premium paid by a taxpayer to an RRSP that is a spousal or common-law partner plan in relation to the taxpayer.

Subsection 74.5(12) is amended to add an exception for contributions made to a registered disability savings plan.

This amendment applies to the 2008 and subsequent taxation years.

Clause 7**Attribution Rules – Trusts – Exceptions**

ITA

75(3)(a)

Subsection 75(3) of the Act exempts income from property held by trusts governed by RRSPs and certain other trusts from the application of the attribution rules in subsection 75(2). Subsection 75(2) generally applies to attribute income from trust property to a person where the property was received by the trust from the person and can revert to the person (or pass to other persons determined by that person).

Paragraph 75(3)(a) is amended to extend the exemption so that it applies to property held by a trust governed by a registered disability savings plan.

This amendment applies to the 2008 and subsequent taxation years.

Clause 8

Qualifying Disposition

ITA

107.4(1)

Under subsection 107.4(3) of the Act, a qualifying disposition generally qualifies for a tax-deferred “rollover” of the property to the trust. For this purpose, subsection 107.4(1) defines “qualifying disposition” to be a disposition of property to a trust that does not result in any change in the beneficial ownership of the property and that otherwise meets the conditions set out in that subsection. The condition in paragraph 107.4(1)(j), which applies where the transferor is a trust governed by a registered education savings plan (RESP) or certain other special purpose trusts, requires the transferor trust to be the same type of trust as the transferee trust. For example, if the transferor trust is an RESP trust, the transferee trust must also be an RESP trust for the disposition to be a qualifying disposition.

Paragraph 107.4(1)(j) is amended so that it also applies to a trust governed by a registered disability savings plan.

This amendment applies to the 2008 and subsequent taxation years.

Clause 9

Taxation of Trusts and their Beneficiaries – Definitions

ITA

108(1)

“trust”

For the purposes of the 21-year deemed disposition rule and other specified measures, subsection 108(1) of the Act defines “trust” to exclude certain trusts. Under paragraph (a), trusts governed by RRSPs and other deferred income plans are among the excluded trusts for these purposes.

Paragraph (a) of the definition is amended to add to the list of exclusions a trust governed by a registered disability savings plan.

This amendment applies to the 2008 and subsequent taxation years.

Clause 10

GST Credit - Definitions

ITA

122.5(1)

“adjusted income”

Subsection 122.5(1) of the Act defines a number of terms for the purpose of the goods and services tax credit (GSTC).

The definition “adjusted income” is amended to exclude payments from a registered disability savings plan from the income base upon which the GSTC is calculated.

This amendment applies to the 2008 and subsequent taxation years.

Clause 11**Canada Child Tax Benefit – Definitions**

ITA

122.6

“adjusted income”

Section 122.6 of the Act defines a number of terms for the purpose of the Canada Child Tax Benefit (CCTB).

The definition “adjusted income” is amended to exclude payments from a registered disability savings plan from the income base upon which the CCTB is calculated.

This amendment applies to the 2008 and subsequent taxation years.

Clause 12**Changes in Residence - Definitions**

ITA

128.1(10)

“excluded right or interest”

Subsection 128.1(10) of the Act defines the expression “excluded right or interest” for the purposes of the taxpayer migration rules in section 128.1. This definition is primarily of relevance for paragraphs 128.1(1)(b) and (4)(b), which treat individuals as having disposed of (and to have immediately reacquired) most of their property on immigrating to or emigrating from Canada. Generally, excluded rights or interests are exempted from these deemed disposition rules. Paragraph (a) of the definition refers to rights under, or an interest in a trust governed by, certain deferred income plans, including RRSPs.

Paragraph (a) of the definition is amended to add a reference to registered disability savings plans.

This will ensure that a beneficiary under a registered disability savings plan who immigrates to or emigrates from Canada will not be treated as having disposed of their rights under the plan.

This amendment applies to the 2008 and subsequent taxation years.

Clause 13**Mutual Fund Qualifying Exchanges**

ITA

132.2(3)(h)

Section 132.2 of the Act provides rules to allow two mutual fund trusts, or a mutual fund trust and a mutual fund corporation, to merge on a tax-deferred basis. Bill C-33, *Income Tax Amendments Act, 2006*, included amendments to restructure this section. Proposed paragraph 132.2(3)(h) ensures that such a merger will not cause shares or units of the transferor fund to cease to be qualified investments for trusts governed by RRSPs and certain other registered plans.

Proposed paragraph 132.2(3)(h) is amended to add a reference to the definition “qualified investment” in new subsection 205(1). This amendment, which applies to the 2008 and subsequent taxation years, is consequential to the introduction of registered disability savings plans.

Clause 14

Registered Disability Savings Plans

ITA
146.4

New section 146.4 of the Act provides rules relating to registered disability savings plans.

In general terms, a registered disability savings plan is a trust arrangement, the beneficiary under which qualifies for the disability tax credit, and to which contributions (including grant and bond payments under the *Canada Disability Savings Act*) are made for the purpose of improving the long-term financial security of the beneficiary. Generally, there can never be more than one registered disability savings plan of a beneficiary at any given time.

The tax treatment of registered disability savings plans is similar, in some respects, to that of registered education savings plans. It is similar in that contributions are not deductible and investment income accrues on a tax-deferred basis. The tax treatment of payments made from registered disability savings plans is, however, quite different. Unlike registered education savings plans, each payment made from a registered disability savings plan is considered to be comprised, in part, of grants and bonds and investment income, and such part is included in the beneficiary's income when the payment is received.

Section 146.4 applies to the 2008 and subsequent taxation years.

Definitions

ITA
146.4(1)

New subsection 146.4(1) of the Act defines a number of terms that apply for the purposes of new section 146.4.

“assistance holdback amount”

Subsection 146.4(1) defines “assistance holdback amount”, in relation to a disability savings plan, as having the meaning assigned under the *Canada Disability Savings Act*. (It is expected that the definition will be set out in regulations made pursuant to that Act, rather than in the Act itself.) In general terms, the assistance holdback amount is the amount that the plan would be required, under the *Canada Disability Savings Act*, to repay to the government if a disability assistance payment were made from the plan – that is, the total amount of grants and bonds paid into the plan (or into any prior registered disability savings plan of the beneficiary) in the ten-year period preceding the disability assistance payment, plus associated investment income.

The definition is relevant for a number of provisions in new section 146.4 of the Act.

- Subsection 146.4(4) sets out conditions that a disability savings plan must satisfy in order for the plan to be a registered plan. One such condition – set out in paragraph 146.4(4)(h) – is that the plan prohibit a disability assistance payment from being made if the payment would cause the fair market value of the plan’s assets to fall below the assistance holdback amount. This is to ensure that the plan has sufficient assets to satisfy its potential repayment obligations under the *Canada Disability Savings Act*.
- Subsection 146.4(7) sets out the manner for determining the non-taxable portion of a disability assistance payment. In general terms, the proportion of the payment that is non-taxable is the same as the proportion that contributions to the plan is to the total value of the plan’s assets. In determining this proportion, the value of the plan’s assets is reduced by the assistance holdback amount – i.e., by the amount that the plan is required to retain in order to satisfy any repayment obligations that may arise under the *Canada Disability Savings Act*.

- Paragraph 146.4(10)(a) provides for the automatic deregistration of a registered disability savings plan where the plan becomes non-compliant. When this occurs, paragraph 146.4(10)(b) deems a disability assistance payment to have been made from the plan, the taxable portion of which is included in income by virtue of subsection 146.4(6). The deemed payment is equal to the value of the plan's assets less the assistance holdback amount. The exclusion of the assistance holdback amount is in recognition of the fact that the plan will be required by the *Canada Disability Savings Act* to repay this amount to the government.
- If a registered disability savings plan becomes deregistered because it pays to the beneficiary some or all of the assistance holdback amount (in contravention of paragraph 146.4(4)(h)), paragraph 146.4(10)(c) deems the plan to have made an additional disability assistance payment equal to the amount so paid out, the non-taxable portion of which is deemed to be nil. New paragraph 60(z) provides for an offsetting deduction if this amount is subsequently repaid to the government.

“contribution”

Subsection 146.4(1) defines “contribution” to a disability savings plan to exclude amounts paid into the plan under the *Canada Disability Savings Act*. This ensures, among other things, that grants and bonds paid into a registered disability savings plan under the *Canada Disability Savings Act* are not taken into account for the purpose of applying the \$200,000 lifetime limit (in subparagraph 146.4(4)(e)(iii)) on contributions to registered disability savings plans of a beneficiary, and that grants and bonds are taxable when paid out of registered disability savings plans.

The definition “contribution” also excludes prescribed payments, in anticipation that some provinces may wish to make contributions to registered disability savings plans on behalf of their residents.

These exclusions do not apply for the purpose of paragraph (b) of the definition “disability savings plan” in this subsection. This ensures that an arrangement that receives no amounts other than bonds paid under the *Canada Disability Savings Act* may still qualify as a disability savings plan.

“director”

Subsection 146.4(1) defines “director” of a disability savings plan of a beneficiary at any time to mean each of the following:

- An entity that has, at that time, rights as an entity with whom the issuer entered into the plan. – See the commentary on the definition “disability savings plan” in this subsection for a description of those entities who are permitted to enter into a disability savings plan of a beneficiary;
- An entity that has, at that time, rights as a successor or assignee of another director of the plan. – See the commentary on paragraph 146.4(4)(b) for a description of those entities who are permitted to acquire rights as a successor or assignee of a director of a disability savings plan; and
- The beneficiary, if the beneficiary has, at that time, rights under the plan to make decisions (either alone or with other directors) concerning the plan. (The beneficiary will not be considered to be a director if the beneficiary’s only such right is to direct that disability assistance payments be made as provided for in subparagraph 146.4(4)(l)(ii).) This paragraph is primarily relevant where the beneficiary of a disability savings plan would not otherwise qualify as a director of the plan under paragraph (a) or (b).

As illustrated in the following examples, a disability savings plan may have several directors throughout its existence and more than one director at any given time.

Example 1

The mother and father of a minor child jointly establish a disability savings plan for the child. – The parents are joint directors of the plan.

Example 2

A father establishes a disability savings plan for his child. The plan provides for decisions regarding the plan to be made solely by the father until the child reaches the age of majority, and then to be made jointly with the child. – The father is the sole director of the plan until the child reaches the age of majority, at which time the father and the child become joint directors of the plan.

Example 3

The mother and father of an adult child with a mental impairment are the legal guardians of the child. The father establishes a disability savings plan for the child. Upon the father's death, the mother acquires the father's rights under the plan. – The father and mother are successive directors of the plan.

Example 4

A single mother, of a child with a physical impairment, establishes a disability savings plan for the child. The mother dies while the child is still a minor. The Children's Aid Society assumes custody and care of the child, and acquires the mother's rights and obligations under the disability savings plan. Upon reaching the age of majority, the child acquires all rights and obligations under the plan. – The mother, the Children's Aid Society and the child are successive directors of the plan.

In practice, the directors of a disability savings plan will have the principal decision making authority with respect to the plan, which could include, for example, directing investments and the amount and timing of payouts.

Where an entity becomes a director of a disability savings plan after the plan has been entered into, new paragraph 146.4(4)(c) requires the plan to prohibit the new director from acting as a director (except to the extent otherwise permitted by the Minister or the specified Minister) until such time as the issuer has been advised of the new directorship and been provided with the new director's Social Insurance Number or business number, as the case may be. The issuer is then required, by new paragraph 146.4(13)(a), to so notify the specified Minister.

A director of a registered disability savings plan will be subject to the provisions of the Act that impose sanctions relating to such plans. This includes new subsection 160.2(2.3), which makes directors jointly liable with the beneficiary (or the beneficiary's estate) for taxes arising in connection with the deregistration of a non-compliant plan. It also includes new Part XI, which imposes taxes on directors in connection with various transactions relating to the plan, such as the acquisition of a non-qualifying investment or the disposition of an asset for inadequate consideration.

“disability assistance payment”

Subsection 146.4(1) defines a “disability assistance payment” in relation to a disability savings plan of a beneficiary to mean any payment made from the plan to the beneficiary during the beneficiary's lifetime or to the beneficiary's estate following the death of the beneficiary. In accordance with the registration condition in new paragraph 146.4(4)(g), disability assistance payments are one of three types of payments that a registered disability savings plan is permitted to make. (The others are transfers in accordance with subsection 146.4(8) and repayments to the government as required under the *Canada Disability Savings Act*.)

Under subsection 146.4(6), the amount by which a disability assistance payment exceeds the non-taxable portion of the payment (as determined under subsection 146.4(7)) is included in computing the income of the beneficiary or the beneficiary's estate.

Section 146.4 places no restrictions on the timing or amount of a disability assistance payment, or on the use to which such a payment is put, apart from:

- prohibiting a registered disability savings plan from making a disability assistance payment that would result in the plan being unable to satisfy a repayment requirement that may arise under the *Canada Disability Savings Act* (paragraph 146.4(4)(h));
- requiring that lifetime disability assistance payments commence no later than the year in which the beneficiary attains 60 years of age (paragraph 146.4(4)(i));
- placing an annual limit on the amount of lifetime disability assistance payments (paragraph 146.4(4)(j));
- requiring that a registered disability savings plan specify whether disability assistance payments that are not lifetime disability assistance payments are permitted or not (paragraph 146.4(4)(k)); and
- in some cases, imposing the limit that would otherwise apply only to lifetime disability assistance payments to all disability assistance payments (paragraph 146.4(4)(l)).

Under the *Canada Disability Savings Act*, a disability assistance payment made from a registered disability savings plan at a time when there is an assistance holdback amount in relation to the plan will trigger a requirement for the plan to repay the assistance holdback amount to the government.

“disability savings plan”

Subsection 146.4(1) defines “disability savings plan” of a beneficiary to be an arrangement, between a trust company (the “issuer”) and one or more other entities, that is entered into in a year in which the beneficiary is a DTC-eligible individual (as defined in this subsection) and under which contributions are to be invested and used by the issuer to make payments to the beneficiary. (For the purposes of this definition, contributions include payments made into the plan under the *Canada Disability Savings Act*. This ensures that an arrangement that receives no amounts other than bonds paid under the *Canada Disability Savings Act* does not fail to qualify as a disability savings plan.)

The definition “disability savings plan” requires that the issuer be licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee. In addition, the definition requires that, at the time the arrangement is entered into, there be an agreement between the issuer and the specified Minister (i.e., the Minister of Human Resources and Social Development) that applies to the arrangement for the purposes of the *Canada Disability Savings Act*.

The definition also limits the entity (or entities) with whom the issuer can enter into the arrangement to the beneficiary and any entity that is, at the time the arrangement is entered into, a qualifying person in relation to the beneficiary. Subsection 146.4(1) defines “qualifying person” as

- a legal parent of the beneficiary, if the beneficiary is a minor, and
- if the beneficiary is not contractually competent (whether because of age or otherwise) to enter into such an arrangement, a guardian, tutor or curator of the beneficiary under the laws of the province in which the beneficiary resides, or a public department, agency or institution that maintains the beneficiary.

This means that, if the beneficiary is of the age of majority and contractually competent, no one other than the beneficiary can enter into the arrangement with the issuer. Only if the beneficiary is a minor, or is not otherwise contractually competent, can entities other than the beneficiary enter into the arrangement.

The definition also allows a “director” (as defined in this subsection) of a pre-existing registered disability savings plan of the beneficiary to enter into a new disability savings plan of the beneficiary. However, subsection 146.4(3) generally requires that the pre-existing plan be wound-up within 120 days of the new

arrangement being entered into, in order for the new plan to qualify as a registered disability savings plan. In the course of the wind-up, funds from the pre-existing plan can be transferred to the new plan on a tax-free basis under subsection 146.4(8).

“DTC-eligible individual”

Subsection 146.4(1) defines an individual to be a “DTC-eligible individual” in respect of a year if the individual has a severe and prolonged physical or mental impairment in respect of which the individual, or another person, is entitled to a deduction under section 118.3 of the Act (generally referred to as the “disability tax credit”) in computing tax payable for the year, or would be so entitled if the restriction for attendant care in paragraph 118.3(1)(c) of the Act were disregarded.

This definition is relevant for the definition “disability savings plan” in this subsection, because the beneficiary of the plan must be a DTC-eligible individual in respect of the year in which the plan is entered into in order for the plan to be a disability savings plan. It is also relevant for paragraph 146.4(4)(d), which prohibits contributions in any year in respect of which the beneficiary is not a DTC-eligible individual, and for paragraph 146.4(4)(n), which requires a registered disability savings plan to be terminated by the end of the year following the year in respect of which the beneficiary ceases to be a DTC-eligible individual (or, where DTC-eligibility is in dispute, by such later time as may be specified by the Minister in accordance with new paragraph 146.4(12)(d)).

“life expectancy”

Subsection 146.4(1) defines “life expectancy” of a beneficiary under a disability savings plan, determined for a year in connection with the plan. The definition is relevant for paragraph 146.4(4)(j), which limits the amount of lifetime disability assistance payments that can be paid from a registered disability savings plan in any given year. In general terms, the maximum amount that can be so paid is equal to the value of the assets of the plan at the beginning of the year divided by a factor equal to three plus the remaining number of years the beneficiary is expected to live based on the beneficiary’s “life expectancy”.

“Life expectancy” is generally defined to be the beneficiary’s life expectancy at birth for the year of the beneficiary’s birth, the beneficiary’s sex and the beneficiary’s province of birth, or for Canada if the beneficiary was not born in a province – as determined by Statistics Canada. (This information will be made available on the Canada Revenue Agency website.)

However, there are two exceptions to this manner for determining life expectancy.

- If, in the year for which life expectancy is being determined, the beneficiary has survived beyond the life expectancy determined in the general manner described above, the beneficiary’s life expectancy for that year is defined to be the beneficiary’s age at the beginning of that year. This means that the limit on lifetime disability assistance payments for that year is one-third of the value of the plan’s assets at the beginning of the year.
- If a director of the plan provides the issuer of the plan with written certification from a medical doctor who is licensed to practice in a province (or in the place where the beneficiary resides) that the beneficiary’s life expectancy is shorter than that determined in the general manner described, the beneficiary’s life expectancy for each subsequent year is the age to which the beneficiary can be expected to live based exclusively on that certification.

“lifetime disability assistance payments”

Subsection 146.4(1) defines “lifetime disability assistance payments” under a disability savings plan of a beneficiary to be disability assistance payments (as defined in this subsection)

- that are identified under the terms of the plan to be lifetime disability assistance payments, and
- that, once they begin to be paid, are payable at least annually until the beneficiary dies (or the plan is terminated).

This definition is primarily relevant for two of the registration conditions set out in subsection 146.4(4).

- Paragraph 146.4(4)(i), which generally requires that lifetime disability assistance payments commence no later than the end of the year in which the beneficiary turns 60 years of age, and
- Paragraph 146.4(4)(j), which sets a maximum limit on the amount of lifetime disability assistance payments that a registered disability savings plan can make in any given year. This limit is generally equal to the value of the assets of the plan at the beginning of the year divided by three plus the remaining number of years the beneficiary is expected to live based on the beneficiary’s “life expectancy” as defined in this subsection.

“plan trust”

Subsection 146.4(1) defines “plan trust” in relation to a disability savings plan to be the trust governed by the plan. This definition is provided simply for ease of reference.

“qualifying person”

Subsection 146.4(1) defines “qualifying person” in relation to a beneficiary of a disability savings plan at any time to mean each of the following:

- if the beneficiary has not reached the age of majority, a legal parent of the beneficiary; and
- if the beneficiary is not contractually competent (whether because of age or otherwise) to enter into a disability savings plan, a guardian, tutor or curator of the beneficiary under the laws of the province in which the beneficiary resides, or a public department, agency or institution that maintains the beneficiary.

Thus, there are no qualifying persons in relation to a beneficiary who is of the age of majority and contractually competent at the time in question. If a beneficiary is not contractually competent, the beneficiary’s guardian, tutor or curator or the department, agency or institution maintaining the beneficiary is a qualifying person in relation to the beneficiary. A legal parent of a minor beneficiary is also a qualifying person in relation to the beneficiary, even if the parent is not the beneficiary’s guardian, tutor or curator.

This definition is relevant for clause (a)(ii)(B) of the definition “disability savings plan” in this subsection and for subparagraph 146.4(4)(b)(iv). The former allows a disability savings plan of a beneficiary to be established by an entity that is, at the time the plan is established, a qualifying person in relation to the beneficiary. The latter allows an entity to acquire rights as a successor or assignee of a director of a disability savings plan of a beneficiary if the entity is, at the time the rights are acquired, a qualifying person in relation to the beneficiary.

“registered disability savings plan”

Subsection 146.4(1) defines “registered disability savings plan” to be a “disability savings plan” (as defined in this subsection) that satisfies the conditions in subsection 146.4(2).

- Paragraph 146.4(2)(a) requires that, before entering into the plan, the issuer receive written notification from the Minister of National Revenue that, in the Minister’s opinion, a plan with identical terms would, if entered into, comply with the conditions in subsection 146.4(4). This would be the case, for example, if the plan were issued under a specimen plan that had previously been approved by the Minister.
- Paragraph 146.4(2)(b) requires that the issuer be provided, at or before the time the plan is entered into, with the Social Insurance Numbers of the beneficiary and of each of the entities entering into the plan. In other words, the plan cannot be established before this information is provided to the issuer.
- Paragraph 146.4(2)(c) requires that, except in transfer situations, the beneficiary be resident in Canada when the plan is entered into.

By virtue of this definition, a disability savings plan that satisfies the conditions in subsection 146.4(2) is a registered plan as of the time it is entered into. Unlike other registered plans (e.g., registered retirement savings plans, registered education savings plans), there is no requirement that the Minister of National Revenue accept the particular plan for registration.

However, if the conditions set out in subsection 146.4(3) are not subsequently satisfied, that subsection deems the plan never to have been a registered disability savings plan (i.e., the registered status conferred by subsection 146.4(2) is rescinded retroactively to the time when the plan was entered into). Subsection 146.4(3) requires that, within 60 days of the plan being entered into, the issuer notify the “specified Minister” (as defined in this subsection) of the plan’s existence, and that the issuer do so in prescribed form containing prescribed information. That subsection also requires that, within 120 days of the plan being entered into, any pre-existing registered disability savings plan of the beneficiary be terminated.

The definition “registered disability savings plan” also excludes a plan to which subsection 146.4(10) applies. Under that subsection, a registered disability savings plan that is non-compliant (as described in subsection 146.4(11) and subject to subsection 146.4(12)) ceases, as of the time that it becomes non-compliant, to be a registered plan.

“specified Minister”

Subsection 146.4(1) defines “specified Minister” to be the Minister designated for purposes of the *Canada Disability Savings Act*. This will be the Minister for Human Resources and Social Development. (By virtue of subsection 248(1), references in this section to “Minister” – rather than “specified Minister” – mean the Minister of National Revenue.)

Registered Status

ITA

146.4(2)

New subsection 146.4(2) of the Act sets out the conditions that must be satisfied in order for a disability savings plan to be a registered disability savings plan, as defined in new subsection 146.4(1).

Paragraph 146.4(2)(a) requires that, before entering into the plan, the issuer of the plan receive written notification from the Minister of National Revenue that, in the Minister’s opinion, a plan with identical terms would, if entered into, comply with the conditions in subsection 146.4(4) – as would be the case if the plan were issued under a specimen plan that had previously been approved by the Minister. (Refer to the commentary on subsection 146.4(4) for further information.)

Paragraph 146.4(2)(b) requires that the issuer be provided, at or before the time the plan is entered into, with the Social Insurance Numbers of the beneficiary and of each of the entities entering into the plan. In other words, the plan cannot be established before this information is provided to the issuer.

Paragraph 146.4(2)(c) requires that, except in transfer situations, the beneficiary be resident in Canada when the plan is entered into.

By virtue of the definition “registered disability savings plan”, a disability savings plan that satisfies the conditions in this subsection is a registered plan as of the time it is entered into. Unlike other registered plans, there is no requirement that the Minister of National Revenue accept the particular plan for registration.

However, if the conditions set out in subsection 146.4(3) are not subsequently satisfied, that subsection deems the plan never to have been a registered disability savings plan (i.e., the registered status conferred by subsection 146.4(2) is rescinded retroactively to the time when the plan was entered into). (Refer to the commentary on subsection 146.4(3) for further information.)

Registered Status Nullified

ITA

146.4(3)

New subsection 146.4(3) of the Act deems a disability savings plan never to have been a registered disability savings plan if the conditions set out in that subsection are not met. The effect of this provision is that the registered status that was automatically conferred on the plan by virtue of subsection 146.4(2) is rescinded

retroactively to the time when the plan was entered into. (Refer to the commentary on subsection 146.4(2) for further information.)

Under paragraph 146.4(3)(a), the issuer is required, within 60 days of the plan being entered into, to notify the “specified Minister” (i.e., the Minister of Human Resources and Social Development) of the plan’s existence, and to do so in prescribed form containing prescribed information.

If, at the time the plan was entered into, the beneficiary was a beneficiary under another registered disability savings plan, paragraph 146.4(3)(b) requires that the other plan be terminated within 120 days of the new plan being entered into (or by such later day as the specified Minister considers reasonable in the circumstances). If the pre-existing plan is not terminated within the specified timeframe, it maintains its registered status, but the registration of the new plan is nullified by the application of this subsection. This ensures that, except for the time that it takes to process a transfer from one issuer to another, a beneficiary should not have more than one registered disability savings plan at any given time.

Plan Conditions

ITA

146.4(4)

New subsection 146.4(4) of the Act sets out conditions applicable to registered disability savings plans.

In order for a disability savings plan to be a registered disability savings plan, new paragraph 146.4(2)(a) requires that the issuer have received prior notification from the Minister of National Revenue that, in the Minister’s opinion, a plan identical to the plan would, if entered into, comply with the conditions in this subsection.

In order for a registered disability savings plan to maintain its registered status, new paragraph 146.4(11)(a) of the Act (in conjunction with new subsection 146.4(10) of the Act) requires that the plan continue to comply with the conditions in this subsection. Failure to administer a registered disability savings plan in accordance with its terms will also generally cause the plan to be deregistered. (Refer to the commentary on subsections 146.4(10) to (12) for further information.)

ITA

146.4(4)(a)

Under new paragraph 146.4(4)(a) of the Act, a registered disability savings plan must stipulate that it is to be operated exclusively for the benefit of the beneficiary. Given the difficulty inherent in having to determine if a registered disability savings plan is always being administered in accordance with this particular plan term, failure to so administer will not cause the plan to be deregistered. However, if the beneficiary (or the beneficiary’s legal representative) is of the opinion that the plan is not being operated exclusively for the benefit of the beneficiary, this explicit provision in the plan should assist in seeking legal recourse for the beneficiary to acquire control of the plan from the existing directors.

Paragraph 146.4(4)(a) also requires that the plan stipulate that the designation of the beneficiary is irrevocable, and that no right of the beneficiary to receive payments from the plan is capable of surrender or assignment.

ITA

146.4(4)(b) and (c)

New paragraphs 146.4(4)(b) and (c) contain requirements relating to the acquisition of rights under a registered disability savings plan after the plan is entered into.

Paragraph 146.4(4)(b)

Paragraph 146.4(4)(b) requires that the plan allow an entity to acquire rights as a successor or assignee of a director of the plan only if the entity is one of the following: the beneficiary, the beneficiary’s estate, a current or previous director of the plan, or a qualifying person in relation to the beneficiary. Upon acquiring such rights,

the successor or assignee becomes a director of the plan. (Refer to the commentary on the definitions “director” and “qualifying person” in subsection 146.4(1) for further information.)

Paragraph 146.4(4)(c)

Paragraph 146.4(4)(c) requires a plan to prohibit a new director from acting as director (except to the extent otherwise permitted by either the Minister or the specified Minister) until such time as the issuer has been advised of the new directorship and been provided with the new director’s Social Insurance Number or business number, as the case may be.

When an entity becomes a director of a disability savings plan after the plan is entered into, the issuer is required, under new paragraph 146.4(13)(a), to inform the specified Minister of the new directorship no later than 60 days after the later of the day on which the issuer is advised of the new directorship and the day on which the issuer is provided with the new director’s Social Insurance Number or business number, as the case may be.

ITA

146.4(4)(d) to (f)

New paragraphs 146.4(4)(d) to (f) contain restrictions on contributions to a registered disability savings plan. (By virtue of the definition “contribution” in subsection 146.4(1), these restrictions do not apply to grants and bonds paid into the plan under the *Canada Disability Savings Act*.)

Paragraph 146.4(4)(d)

Paragraph 146.4(4)(d) requires that the plan prohibit contributions from being made in a year in respect of which the beneficiary is no longer a DTC-eligible individual. (Refer to the commentary on the definition “DTC-eligible individual” in subsection 146.4(1) for further information.) It also requires that the plan prohibit contributions after the death of the beneficiary.

Paragraph 146.4(4)(e)

Paragraph 146.4(4)(e) requires that the plan prohibit contributions from being made after the year in which the beneficiary turns 59 years of age, or at a time when the beneficiary is not resident of Canada. It also requires that the plan prohibit a contribution from being made if the total of the contribution and all other contributions to registered disability savings plans of the beneficiary would exceed \$200,000. The prohibitions in paragraph 146.4(4)(e) do not apply to contributions made by way of a transfer made in accordance with new subsection 146.4(8).

Paragraph 146.4(4)(f)

Paragraph 146.4(4)(f) requires that the plan prohibit contributions by an entity that is not a director of the plan, except with the written consent of a director of the plan. This allows the director to schedule contributions so as to maximize access to grants payable under the *Canada Disability Savings Act*.

ITA

146.4(4)(g) to (l)

New paragraphs 146.4(4)(g) to (l) contain requirements relating to payments from a registered disability savings plan.

Paragraph 146.4(4)(g)

Paragraph 146.4(4)(g) requires that the plan provide that no payments may be made from the plan other than

- disability assistance payments, which are defined by subsection 146.4(1) to be any payment made from the plan to the beneficiary or the beneficiary’s estate,
- a transfer to another registered disability savings plan of the beneficiary in accordance with subsection 146.4(8), and

- repayments that the plan may be required to make to the government under the *Canada Disability Savings Act*.

Paragraph 146.4(4)(h)

Paragraph 146.4(4)(h) requires that the plan prohibit a disability assistance payment being made from the plan if the payment would cause the value of the plan's assets to fall below the assistance holdback amount. (See the commentary on the definition "assistance holdback amount" in subsection 146.4(1) for further information). The purpose of this provision is to ensure that the plan has sufficient assets to satisfy any potential obligations to repay grants and bonds (and associated investment income) under the *Canada Disability Savings Act*.

Paragraph 146.4(4)(i)

Paragraph 146.4(4)(i) requires that the plan provide for lifetime disability assistance payments to commence no later than the end of the year in which the beneficiary turns 60 years of age. Subsection 146.4(1) defines "lifetime disability assistance payments" as disability assistance payments (simply, payments from the plan to the beneficiary) that are identified under the terms of the plan to be lifetime disability assistance payments and that, once they begin to be paid, are payable at least annually until the beneficiary dies or the plan is terminated. Paragraph 146.4(4)(j) sets a limit on the total amount of lifetime disability assistance payments that can be made in any year. (See the commentary on that paragraph for further information.)

If the plan is established in the year the beneficiary turns 60 years of age or a later year (which could occur only if the plan is being set up to receive funds transferred from another registered disability savings plan of the beneficiary), paragraph 146.4(4)(i) does not require the plan to provide for the commencement of lifetime disability assistance payments until the end of the year following the year in which the plan is established.

Paragraph 146.4(4)(j)

Paragraph 146.4(4)(j) requires that the plan limit the total amount of lifetime disability assistance payments that can be made in any given year to the amount determined in accordance with the formula set out in that paragraph. The limit determined under the formula would generally allow equal annual payments to be made for the remainder of the beneficiary's lifetime, plus an additional three years.

The formula set out in paragraph 146.4(4)(j) is as follows:

$$A/(B + 3 - C) + D$$

Variable A is generally the fair market value of the plan's assets at the beginning of the year. However, if the plan holds a "locked-in" annuity (as described below), that annuity is disregarded in determining the value of the plan's assets.

Variable B is the beneficiary's "life expectancy" for the year in connection with the plan as defined in subsection 146.4(1). Generally, this is the beneficiary's life expectancy (expressed in whole years) at birth as determined by Statistics Canada. However, there are two exceptions for determining life expectancy in this manner.

- If, in the year for which the limit is being determined, the beneficiary has survived beyond the life expectancy determined in the general manner described above, the beneficiary's life expectancy for that year is defined to be the beneficiary's age at the beginning of that year. This means that the limit on lifetime disability assistance payments for that year is one-third of the value of the plan's assets at the beginning of the year.
- If a director of the plan provides the issuer of the plan with written certification from a medical doctor who is licensed to practice in a province (or where the beneficiary resides) that the beneficiary's life expectancy is shorter than that determined in the general manner described, the beneficiary's life expectancy for each subsequent year is the age to which the beneficiary can be expected to live based exclusively on that certification.

Variable C is the beneficiary's age (expressed in whole years) at the beginning of the year for which the limit is being determined.

Variable D applies only if, at the beginning of the year for which the limit is being determined, the plan trust holds a certain type of annuity (referred to in this commentary as a "locked-in" annuity). A locked-annuity is an annuity that is described in paragraph (c) – but not in paragraph (b) – of the definition "qualified investment" in new subsection 205(1). An annuity described in paragraph (c) of that definition would also be described in paragraph (b) if the holder has the right to surrender it at any time.

Where the plan trust holds a locked-in annuity at the beginning of the year, variable D is the total amount of periodic payments received by the trust in the year under the annuity. If the trust disposed of the right to such payments in the year for which the limit is being determined, variable D is an estimate of the payments that the trust would otherwise have received. This ensures that, where a trust governed by a registered disability savings plan holds a locked-in annuity, the annual limit on lifetime disability assistance payments will never be less than the annuity payments to be received by the trust in that year.

By virtue of subsections 146.4(6) and (7), the beneficiary is required to include in income for a year the taxable portion of each lifetime disability assistance payment received in the year. (Refer to the commentary on those subsections for more information.)

The amount determined by the formula in paragraph 146.4(4)(j) is also relevant for paragraph 146.4(4)(l). (Refer to the commentary on that paragraph for further information.)

Paragraph 146.4(4)(k)

Paragraph 146.4(4)(k) requires that the plan specify whether or not disability assistance payments that are not lifetime disability assistance payments are permitted.

Paragraph 146.4(4)(l)

Paragraph 146.4(4)(l) requires that the plan contain certain provisions that apply when, at the end of any particular calendar year, the total amount of grants and bonds paid into registered disability savings plans of the beneficiary under the *Canada Disability Savings Act* exceeds the total amount of private contributions. These plan provisions serve to impose limits on, and provide the beneficiary with rights relating to, disability assistance payments that may be made in the year following the particular year. (In these notes, the following year is referred to as the "restricted year".)

Under subparagraph 146.4(4)(l)(i), the plan must limit the total amount of disability assistance payments that can be paid to the beneficiary in the restricted year to the amount determined for that year under the formula set out in paragraph 146.4(4)(j). In other words, the limit that would otherwise apply to lifetime disability assistance payments, if any, made from the plan in the restricted year applies instead to all disability assistance payments made from the plan in that year (whether as lifetime disability assistance payments or otherwise). This limitation applies if the beneficiary is less than 59 years of age at the end of the particular year.

If the beneficiary is between 27 and 58 years of age at the end of the particular year, subparagraph 146.4(4)(l)(ii) requires that the plan provide the beneficiary with the right to direct that disability assistance payments be made to the beneficiary in the restricted year. The requirement that the beneficiary be at least 27 years of age is intended to ensure that beneficiary-directed disability assistance payments do not trigger a repayment of grants and bonds paid into the plan while the beneficiary was a minor.

The plan must stipulate that beneficiary-directed payments made pursuant to this provision are subject to the constraints imposed by paragraph 146.4(4)(h) and subparagraph 146.4(4)(l)(i). This means that a beneficiary-directed payment cannot be made if the payment would cause the value of the plan's assets to fall below the assistance holdback amount. It also means that beneficiary-directed payments, when added to all other disability assistance payments made to the beneficiary in the restricted year (whether as lifetime disability assistance

payments or otherwise), must not exceed the amount determined for that year under the formula set out in paragraph 146.4(4)(j).

This plan provision will be of relevance primarily to a beneficiary who would otherwise have little or no say in the amount and timing of disability assistance payments to be made from the plan, typically because the plan was established when the beneficiary was a minor. (As is the case for other decision making related to financial matters, normal rules of legal competency determined under provincial laws would apply to the ability of a beneficiary to direct that such payments be made.)

If the beneficiary is at least 59 years of age at the end of the particular year, subparagraph 146.4(4)(l)(iii) creates a minimum withdrawal requirement. Specifically, it requires that the plan provide for the total of all disability assistance payments made to the beneficiary in the restricted year (whether as lifetime disability assistance payments or otherwise) to be equal to the amount determined for that year under the formula set out in paragraph 146.4(4)(j). In effect, this requires a minimum payment in the restricted year of an amount equal to the maximum limit on lifetime disability assistance payments for that year. (If the value of the assets declines during the restricted year to such an extent that it is not possible to satisfy this requirement, it will suffice for the plan to pay whatever amounts are supported by the value of the depreciated assets.)

The requirements of subparagraphs 146.4(4)(l)(i) and (iii) do not apply to disability assistance payments made to the beneficiary's estate after the death of the beneficiary.

ITA

146.4(4)(m)

Paragraph 146.4(4)(m) requires the plan to provide that the issuer will, when directed to do so by the directors of the plan, transfer all the property held by the plan trust (or an amount equal to its value) to another registered disability savings plan of the beneficiary, together with all information in the issuer's possession that may be considered necessary for the new plan to comply with the requirements of this Act and with any conditions and obligations imposed under the *Canada Disability Savings Act*.

ITA

146.4(4)(n)

Paragraph 146.4(4)(n) deals with the termination of the plan following the beneficiary's death or cessation of DTC eligibility.

Specifically, if, in respect of a particular year following the year in which the plan was entered into, the beneficiary fails to qualify as a "DTC-eligible individual" (as defined in subsection 146.4(1)), the plan must provide for any amounts remaining in the plan (after taking into account any repayments under the *Canada Disability Savings Act*) to be paid to the beneficiary, and for the plan to be terminated, by the end of the year following the particular year. Although the plan must provide for termination within this timeframe, paragraph 146.4(12)(d) allows the Minister to effectively suspend termination, if the beneficiary's DTC status is uncertain or in dispute, until such time as the issue is resolved. (Refer to the commentary on that paragraph for further information.)

Similarly, in the event of the beneficiary's death, the plan must provide for any amounts remaining in the plan (after taking into account any repayments under the *Canada Disability Savings Act*) to be paid to the beneficiary's estate, and for the plan to be terminated, by the end of the year following the year of the beneficiary's death.

Trust Not Taxable

ITA

146.4(5)

New subsection 146.4(5) of the Act generally provides that no income tax is payable by a trust governed by a registered disability savings plan. However, there are situations in which the trust is taxable.

- Under paragraph 146.4(5)(a), tax is payable by the trust on all its taxable income for a year if the trust borrowed money in the year, or if it borrowed money in a preceding year and had not repaid it before the beginning of the year.
- If the trust is not otherwise taxable in the year under paragraph 146.4(5)(a), tax is payable under paragraph 146.4(5)(b) on the trust's taxable income for the year from businesses carried on in the year. Tax is also payable on any income earned by the trust on investments that are not "qualified investments" as defined in new subsection 205(1) and on any capital gains realized from the disposition of those investments. For the purposes of paragraph 146.4(5)(b), "income" includes dividends described by section 83 of the Act, and capital gains are fully taxable.

Taxation of Disability Assistance Payments

ITA
146.4(6)

New subsection 146.4(6) of the Act provides for a portion of each disability assistance payment made from a registered disability savings plan to be included in the income of the beneficiary for the year in which the payment is made. If the beneficiary is not alive at that time, the amount is included in the income of the beneficiary's estate for the year of the payment.

The amount included in income under this subsection is the amount by which the payment exceeds the non-taxable portion of the payment as determined under new subsection 146.4(7). In general terms, the proportion of the payment that is non-taxable is the same as the proportion that total contributions is to the total value of the plan's assets.

This provision, in effect, allows contributions to be paid out of the plan on a tax-free basis (recognizing that contributions are not deductible), while taxing grants and bonds paid into the plan under the *Canada Disability Savings Act* and investment income earned in the plan.

Non-Taxable Portion of Disability Assistance Payment

ITA
146.4(7)

New subsection 146.4(7) of the Act sets out the manner for determining the non-taxable portion of a disability assistance payment for the purpose of new subsection 146.4(6).

In general terms, the proportion of a disability assistance payment that is non-taxable is the same as the proportion that total contributions is to the total value of the plan's assets. More specifically, the non-taxable portion of a disability assistance payment is the amount determined by the formula

$$A \times B/C$$

Variable A is the amount of the disability assistance payment.

Variable B, in general terms, represents the contributions paid to registered disability savings plans of the beneficiary that have not been used in determining the non-taxable portion of previous disability assistance payments, i.e., the running balance of amounts that remain to be withdrawn on a non-taxable basis. More specifically, Variable B is the amount by which contributions previously made to registered disability savings plans of the beneficiary exceed the non-taxable portions of all disability assistance payments previously made from registered disability savings plans of the beneficiary.

Variable C is the amount by which the value of the plan's assets immediately before the payment exceeds the assistance holdback amount in relation to the plan. The exclusion of the assistance holdback amount reflects the conditional nature of grants and bonds paid under the *Canada Disability Savings Act* (and associated income) for the 10-year period following the payment of the grant or bond into the plan.

Subsection 146.4(7) provides that the amount determined thereunder will never be greater than the amount of the disability assistance payment. This deals with the fact that, in certain circumstances, the value of Variable B may exceed the value of Variable C. In such circumstances, the non-taxable portion of the disability assistance payment would, but for this provision, exceed the amount of the payment itself. While this would have no impact on the taxation of the payment – it would be fully non-taxable under subsection 146.4(6) – it would unfairly reduce the running balance of amounts that can subsequently be withdrawn on a tax-free basis.

Transfer of Funds

ITA

146.4(8) and (9)

New subsections 146.4(8) and (9) of the Act provide rules governing transfers from one registered disability savings plan of a beneficiary to another.

The transfer of an amount from a registered disability savings plan of a beneficiary is in accordance with subsection 146.4(8) if the conditions set out in that subsection are met. These conditions are as follows:

- Paragraph 146.4(8)(a) requires that the transfer be to another registered disability savings plan of the beneficiary.
- Paragraph 146.4(8)(b) requires that the transferring plan be terminated immediately following the transfer. This is to ensure that, except for the period it takes to process a transfer, there is never more than one registered disability savings plan of a beneficiary at any given time.
- Paragraph 146.4(8)(c) requires that the issuer of the transferring plan provide the issuer of the receiving plan with any information in its possession that may reasonably be considered necessary for the new plan to comply with the requirements of this Act and with any conditions and obligations imposed under the *Canada Disability Savings Act*. This would include, for example, information regarding contributions to, and payments from, the transferring plan that will be needed for the issuer of the receiving plan to calculate, under subsection 146.4(7), the non-taxable portion of any disability assistance payment made from the receiving plan. It would also include information relating to any transferred grants and bonds (and associated income) that the receiving plan may subsequently be required to repay under the *Canada Disability Savings Act*.
- Paragraph 146.4(8)(d) requires that, if the beneficiary is at least 59 years of age when the transfer takes place (i.e., the age by which lifetime disability assistance payments are required by paragraph 146.4(4)(i) to commence), the receiving plan undertake to pay to the beneficiary any lifetime disability assistance payments that the transferring plan would have paid during the remainder of the year had the transfer not taken place.

In accordance with the registration condition in new paragraph 146.4(4)(g), a transfer in accordance with subsection 146.4(8) is one of three types of payments that a registered disability savings plan is permitted to make.

New subsection 146.4(9) of the Act provides that a transfer from a registered disability savings plan in accordance with subsection 146.4(8) will not (solely because of the transfer) be included in any taxpayer's income.

Non-Compliance – Cessation of Registered Status

ITA

146.4(10) to (12)

New subsections 146.4(10) to (12) of the Act contain provisions dealing with non-compliant registered disability savings plans.

Subsection 146.4(10) describes the consequences of a registered disability savings plan being non-compliant; subsection 146.4(11) sets out the circumstances in which a plan is considered to be non-compliant; and subsection 146.4(12) provides authority for the Minister of National Revenue to modify the application of subsection 146.4(11).

Subsection 146.4(10)

Subsection 146.4(10) outlines the consequences of a registered disability savings plan becoming non-compliant.

If a registered disability savings plan becomes non-compliant at any time, it loses its registered status, as of that time, by virtue of the application of paragraph 146.4(10)(a).

If a plan loses its registered status under paragraph 146.4(10)(a), paragraph 146.4(10)(b) deems the plan to have made a disability assistance payment to the beneficiary (or, if the beneficiary is deceased, to the beneficiary's estate) immediately before the deregistration of the plan. The deemed payment is equal to the value of the plan's assets immediately before deregistration less the "assistance holdback amount" in relation to the plan as defined in subsection 146.4(1). (The exclusion of the assistance holdback amount is in recognition of the fact that the plan will be required by the *Canada Disability Savings Act* to repay this amount to the government.) By virtue of subsection 146.4(6), the taxable portion of this deemed payment is included in the income of the beneficiary (or the beneficiary's estate) for the year in which the payment is deemed to have been made.

If a plan becomes deregistered under paragraph 146.4(10)(a) because all or part of the assistance holdback amount in relation to the plan is included in a disability assistance payment in contravention of paragraph 146.4(4)(h), paragraph 146.4(10)(c) deems the plan to have made an additional disability assistance payment equal to the portion of the assistance holdback amount so paid out. As in paragraph 146.4(10)(b), the payment is deemed to have been made immediately before the plan's deregistration, and to have been made to the beneficiary or the beneficiary's estate, as the case may be. Paragraph 146.4(10)(c) also deems the non-taxable portion of the payment to be nil, which results in the whole amount of the deemed payment being included in income. New paragraph 60(z) of the Act provides for an offsetting deduction if this amount is subsequently repaid to the government.

Subsection 146.4(11)

Subsection 146.4(11) of the Act describes the circumstances in which a registered disability savings plan is considered to be non-compliant.

A registered disability savings plan is non-compliant under paragraph 146.4(11)(a) at any time at which it fails to comply with a condition in subsection 146.4(4).

A registered disability savings plan is non-compliant under paragraph 146.4(11)(b) at any time at which there is a failure to administer the plan in accordance with its terms. An exception is made for a failure to administer the terms of the plan which stipulate – as required by new subparagraph 146.4(4)(a)(i) – that the plan is to be operated exclusively for the benefit of the beneficiary. This exception recognizes the difficulty inherent in determining if a registered disability savings plan is being operated exclusively for the benefit of the beneficiary. Although such a failure will not cause the plan to become non-compliant, the explicit inclusion of this stipulation in the plan terms should assist the beneficiary (or the beneficiary's legal representative) in seeking legal recourse to acquire control of the plan if they have reason to believe that the plan is not being operated exclusively for the beneficiary's benefit.

A registered disability savings plan is non-compliant under paragraph 146.4(11)(c) at any time at which a person fails to comply with a condition or an obligation imposed under the *Canada Disability Savings Act*, but only if the specified Minister (i.e., the Minister of Human Resources and Social Development) is of the opinion that the plan should be considered non-compliant (and thus deregistered) because of the failure, and so notifies the Minister of National Revenue.

Subsection 146.4(12)

Subsection 146.4(12) of the Act provides authority for the Minister of National Revenue to modify the application of paragraphs 146.4(11)(a) and (b). In some cases, the effect is that deregistration is avoided; in others, deregistration is deferred.

Under paragraph 146.4(12)(a), if a plan does not comply with the conditions in subsection 146.4(4) or is not administered in accordance with its terms, the Minister may, if it is just and equitable to do so, waive the application of the paragraph in subsection 146.4(11) that would otherwise result in the plan being considered to be non-compliant. If the Minister waives the application of the relevant paragraph, the plan is not considered to be non-compliant and, accordingly, is not deregistered.

Under paragraph 146.4(12)(b), the Minister may deem the failure that causes a plan to be non-compliant to have occurred at a later time. This will have the effect of deferring the effective date of deregistration.

Paragraph 146.4(12)(c) deals with contributions made to a registered disability savings plan that are prohibited under any of paragraphs 146.4(4)(d) to (f). In general terms, those paragraphs prohibit contributions made after the beneficiary has died, ceased to be DTC-eligible, turned 60 years of age or ceased to be resident, as well as contributions in excess of a \$200,000 lifetime limit and non-director contributions made without consent.

Paragraph 146.4(12)(c) provides the Minister with the authority to waive the application of the provisions of subsection 146.4(11) that would otherwise cause the plan to become non-compliant when a non-permissible contribution has been made, if the contribution is withdrawn from the plan within such period of time as specified by the Minister.

Where the withdrawal condition is satisfied and the Minister agrees to the application of paragraph 146.4(12)(c), the prohibited contribution is deemed never to have been made, thus ensuring that it does not cause the plan to be considered non-compliant under subsection 146.4(11). In addition, the withdrawal is deemed not to be a disability assistance payment, thus ensuring that no portion of the payment is taxable under new subsection 146.4(6). Finally, the withdrawal is deemed not to be in contravention of paragraph 146.4(4)(g), thus ensuring that the plan is not deregistered for having made a non-permissible payment.

Paragraph 146.4(12)(d) deals with situations in which the beneficiary of a registered disability savings plan dies or ceases to be a DTC-eligible individual, and the plan is not terminated by the end of the following year, as required under paragraph 146.4(4)(n). Under normal circumstances, the plan would become non-compliant immediately after the deadline set out in paragraph 146.4(4)(n).

However, if the failure to terminate was due either to the issuer not being aware of the beneficiary having died or having ceased to be DTC-eligible or to there being some uncertainty with respect to the beneficiary's DTC status, paragraph 146.4(10)(d) allows the Minister to specify a later date as of which the plan must be terminated. (The date so chosen must, in the Minister's opinion, be sufficient to allow for the plan to be terminated in an orderly manner.) This later date is then considered to be the date as of which the Act and the plan required the plan to be terminated. If the plan is not subsequently terminated by that date, it becomes non-compliant at that time.

This provision will allow a registered disability savings plan in respect of which the beneficiary's DTC status is uncertain or in dispute to continue until such time as the issue is resolved. The practical effect of the provision is that, where the Minister is of the opinion that the beneficiary is no longer a DTC-eligible individual but the directors or the beneficiary disagree, the Minister can indicate that there is no requirement to terminate the plan until a definitive determination of the beneficiary's DTC status has been made. If DTC eligibility is subsequently confirmed, then no termination is (or was ever) required. If, on the other hand, it is determined that the beneficiary is no longer DTC-eligible, the Minister will set a new deadline as of which the plan has to be terminated.

Obligations of Issuer

ITA

146.4(13)

New subsection 146.4(13) of the Act imposes obligations on the issuer of a registered disability savings plan. Where the issuer of a registered disability savings plan fails to comply with an obligation imposed under this subsection, the issuer will be subject to a penalty, under subsection 162(7) of the Act, equal to \$25 per day of default (subject to a \$100 minimum and a \$2,500 maximum).

If an entity becomes a director of a registered disability savings plan after the plan is entered into, paragraph 146.4(13)(a) requires that the issuer notify the specified Minister (i.e., the Minister of Human Resources and Social Development), in prescribed form containing prescribed information, of the new directorship. It requires that the issuer do so no later than 60 days after the later of the day on which the issuer is notified of the new directorship and the day on which the issuer is provided with the new director's Social Insurance Number or business number, as the case may be. (The registration condition in new paragraph 146.4(4)(c) prohibits a new director from acting as a director before the issuer is provided with this information.)

Paragraph 146.4(13)(b) requires that the issuer of a registered disability savings plan not amend the plan without prior written notification from the Minister of National Revenue that, in the Minister's opinion, a plan with terms identical to the terms of the amended plan would comply with the conditions in subsection 146.4(4).

If the issuer of a registered disability savings plan becomes aware that the plan is (or is likely to become) non-compliant as described in paragraph 146.4(11)(a) or (b) – i.e., it does not comply with the conditions in subsection 146.4(4) or is not being administered in accordance with its terms – paragraph 146.4(13)(c) requires that the issuer notify the Minister of National Revenue and the Minister of Human Resources and Social Development of this fact within 30 days of becoming so aware. For this purpose, non-compliance is determined without regard for the discretionary provisions of subsection 146.4(12).

Paragraph 146.4(13)(d) requires that the issuer of a registered disability savings plan exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that a director of the plan may become liable to pay tax, in connection with the plan, under new Part XI of the Act. That Part imposes taxes on registered disability savings plan directors in connection with various transactions relating to the plan, such as the acquisition of non-qualifying investments and the disposition of assets for inadequate consideration.

Clause 15

Trusts under Registered Disability Savings Plans

ITA

149(1)

New paragraph 149(1)(*u.1*) of the Act exempts from tax under Part I trusts governed by a registered disability savings plan, to the extent provided by new section 146.4. Subsection 146.4(5) provides that no tax is payable under Part I on the taxable income of a trust governed by a registered disability savings plan, except in very limited circumstances where the trust borrows money, carries on a business or holds non-qualified investments. For more details, refer to the commentary to that subsection.

This amendment applies to the 2008 and subsequent taxation years.

Clause 16

Withholding

ITA

153(1)(i)

Section 153 of the Act authorizes the withholding of tax from any of the payments described in subsection 153(1).

New paragraph 153(1)(i) is added to authorize the withholding of tax on payments from a registered disability savings plan. It is intended that Part I of the *Income Tax Regulations* be amended to require such withholding. It is expected that the Regulations will allow \$15,000 to be withdrawn each year without being subject to withholding and that payments in excess of that amount will be subject to the same withholding rates that apply to payments from a registered retirement income fund in excess of the minimum amount. Only the taxable portion of the payment (as determined under subsections 146.4(6) and (7) of the Act) will be taken into account in determining the applicable withholding rate.

This amendment applies to the 2008 and subsequent taxation years.

Clause 17

Joint and Several Liability – Registered Disability Savings Plan

ITA

160.2(2.3)

New subsection 160.2(2.3) of the Act applies to registered disability savings plans. In general terms, it makes the director jointly liable with the beneficiary (or the beneficiary's estate) for taxes arising in connection with the deregistration of a non-compliant plan in accordance with new subsection 146.4(10).

If a registered disability savings plan loses its registered status, paragraph 146.4(10)(b) deems the plan to have made a disability assistance payment to the beneficiary (or, if the beneficiary is deceased, to the beneficiary's estate) immediately before the deregistration of the plan. In limited circumstances, paragraph 146.4(10)(c) deems an additional disability assistance payment to have been made to the beneficiary (or the beneficiary's estate). By virtue of subsection 146.4(6), the taxable portion of these deemed payments is included in the income of the beneficiary (or the beneficiary's estate) for the year in which the payment is deemed to have been made. For more details, refer to the commentary on subsection 146.4(10).

New subsection 160.2(2.3) provides that, where a taxpayer (the beneficiary or the beneficiary's estate) is required to include in income an amount in respect of a disability assistance payment that is deemed by subsection 146.4(10) to have been made from a registered disability savings plan, each director of the plan is jointly and severally, or solidarily, liable for the portion of the taxpayer's tax that is attributable to the deemed payment. The Minister of National Revenue may reassess each director for such a liability under subsection 160.2(3).

The expression "director" is defined in subsection 146.4(1). A director of a registered disability savings plan is generally the person that has (or the persons that have) the principal decision making authority with respect to the plan.

This amendment applies to the 2008 and subsequent taxation years.

No Limitation on Liability

ITA

160.2(2.4)

New subsection 160.2(2.4) of the Act provides that the provisions of new subsection 160.2(2.3), which makes a director of a registered disability savings plan jointly liable with a taxpayer for taxes arising in connection

with the deregistration of the plan, do not limit the liability of the taxpayer under any provision of the Act. It also provides that there is no limitation on the liability of the director for the interest for which the director is liable under the Act on an assessment in respect of an amount that the director is liable to pay because of subsection 160.2(2.3).

This amendment applies to the 2008 and subsequent taxation years.

Rules Applicable – Registered Disability Savings Plans

ITA

160.2(6)

New subsection 160.2(6) of the Act provides that a payment by a director of a registered disability savings plan, on account of the director's joint liability under subsection 160.2(2.3) for a portion of a taxpayer's tax, reduces the joint liability to the extent of the payment. However, a payment by the taxpayer on account of the taxpayer's tax liability reduces the joint liability of the director only to the extent that the payment reduces the total liability of the taxpayer to an amount that is less than the amount in respect of which the director was made jointly liable under subsection 160.2(2.3).

This amendment applies to the 2008 and subsequent taxation years.

Clause 18

Tax on Old Age Security Benefits – Definitions

ITA

180.2(1)

“adjusted income”

Subsection 180.2(1) of the Act defines a number of terms for the purpose of the special recovery tax on old age security (OAS) benefits.

The definition “adjusted income” is amended to exclude payments from a registered disability savings plan from the income base upon which the tax on OAS benefits is calculated.

This amendment applies to the 2008 and subsequent taxation years.

Clause 19

Taxes in respect of Registered Disability Savings Plans

ITA

Part XI

New Part XI of the Act imposes taxes in connection with various transactions relating to registered disability savings plans. The taxes are intended to discourage transactions that could put at risk the government support provided in connection with registered disability savings plans through both the tax system and Canada Disability Savings Bonds and Grants to the detriment of the long-term financial security of the beneficiary.

In general terms, the transactions that give rise to tax under Part XI are buying or selling property for inadequate consideration, investing in non-qualifying investments, extending supplementary advantages and using trust property as security. These transactions are similar to those transactions that give rise to sanctions in connection with RRSPs.

Liability for the tax is generally imposed on the director of a registered disability savings plan. However, new section 146.4 of the Act imposes an obligation on the issuer of the plan to take reasonable steps to minimize the possibility of Part XI tax arising. More specifically, paragraph 146.4(13)(d) requires that the issuer of a registered disability savings plan exercise the care, diligence and skill of a reasonably prudent person to

minimize the possibility that a director of the plan may become liable to pay tax, in connection with the plan, under Part XI.

Part XI applies to the 2008 and subsequent taxation years.

Definitions

ITA

205(1)

New subsection 205(1) of the Act defines a number of terms that apply for the purposes of new Part XI.

“advantage”

An “advantage” in relation to a registered disability savings plan is any supplementary benefit or loan that is in any way dependent on the existence of the plan. Exceptions are provided for disability assistance payments, contributions by or with consent of a director, transfers, Canada Disability Savings Bonds and Grants, associated administrative or investments services and contribution loans. An advantage could include, for example, trips, appliances, interest-free loans and plan investments that do not reflect commercial terms.

The definition is relevant for the purpose of new section 206.2, which imposes a tax if an advantage in relation to a registered disability savings plan is extended to any person who is, or who does not deal at arm’s length with, a beneficiary under, or a director of, the plan.

“allowable refund”

The “allowable refund” of a person for a calendar year is the total amounts refundable to the person for the year under new subsection 206.1(4) as a result of the disposition of a non-qualified investment. The definition is relevant for the purposes of new subsections 207(1) and (2).

“benefit”

Subsection 205(1) defines “benefit” in relation to a registered disability savings plan to include any payment or allocation of an amount that is represented to be a return on investment on property held by the plan trust, but which cannot reasonably be considered to be on market terms and conditions. The definition is relevant for the purpose of the definition “advantage”.

“qualified investment”

The definition “qualified investment” sets out the types of property that a trust governed by a registered disability savings plan is permitted to hold. The types of investments that qualify for a registered disability savings plan are generally the same as those that qualify for an RRSP. In general terms, the following are defined to be qualified investments for a registered disability savings plan:

- money, deposits and guaranteed investment certificates;
- government bonds and investment-grade debt;
- mutual funds and segregated fund policies;
- a life annuity contract;
- shares, units and options that are listed on a designated stock exchange in Canada or in a foreign country; and
- other investments prescribed by section 4900 of the *Income Tax Regulations*.

The definition is relevant for the purpose of new section 206.1, which imposes a tax if a trust governed by a registered disability savings plan acquires property that is not a qualified investment, or if property held by the trust ceases to be a qualified investment. It is also relevant for new subsection 146.4(5), which taxes investment income earned by a trust governed by a registered disability savings plan on investments that are not qualified investments.

Definitions in Subsection 146.4(1)

ITA
205(2)

New subsection 205(2) of the Act provides that the definitions in subsection 146.4(1) apply for the purposes of Part XI. The key definitions are “director” and “issuer”. The “director” of a registered disability savings plan is generally the person that has (or the persons that have) the principal decision making authority with respect to a registered disability savings plan. The “issuer” of a registered disability savings plan is the trust company with whom the plan is entered into.

Tax Payable Where Inadequate Consideration

ITA
206

New section 206 of the Act imposes a tax for a calendar year if, in the year, a trust governed by a registered disability savings plan acquires or disposes of property for consideration that differs from its fair market value so that the value of the trust is reduced. The tax is intended to guard against the possibility of artificial transactions being used to enable a director to gain access to plan funds for their own benefit to the detriment of the interests of the beneficiary.

Subsection 206(1) sets out the charging provision for the tax. A separate tax is payable for each such acquisition or disposition.

Subsection 206(2) provides that the amount of the tax is equal to the difference between the consideration referred to in subsection 206(1) and the fair market value.

Subsection 206(3) provides that each person who is a director of the plan, at the time that the tax is imposed, is jointly and severally, or solidarily, liable to pay the tax.

Subsection 206(4) provides authority to the Minister to pay any tax collected back into the beneficiary’s plan if it is just and equitable to do so and the Minister is satisfied that neither the beneficiary nor any of the current directors were involved in the transaction that gave rise to the tax.

Subsection 206(5) ensures that any payment made under subsection 206(4) is not treated as a contribution for the purposes of section 146.4.

Tax Payable on Non-qualified Investment

ITA
206.1

New section 206.1 of the Act imposes a tax for a calendar year if, in the year, a trust governed by a registered disability savings acquires property that is not a qualified investment, or property held by the trust ceases to be a qualified investment. It also provides for a refund of that tax when the plan trust disposes of the property. “Qualified investment” is defined in subsection 205(1).

Subsection 206.1(1) sets out the charging provision for the tax. A separate tax is payable for each such acquisition or cessation.

Subsection 206.1(2) provides that the amount of the tax is equal to 50 per cent of the fair market value of the property, which fair market value is to be determined at the time it was acquired, or at the time immediately before the time it ceased to be a qualified investment, as the case may be.

Subsection 206.1(3) provides that each person who is a director of the plan, at the time that the tax is imposed, is jointly and severally, or solidarily, liable to pay the tax.

Subsection 206.1(4) provides that the persons who were liable to pay the tax are entitled to a refund if the plan trust disposes of the non-qualified investment before the end of the calendar year following the calendar year

in which the tax arose (or such later time permitted by the Minister of National Revenue). The amount of the refund is equal to the lesser of the amount of the tax and the proceeds of disposition. However, no refund is available if it is reasonable to expect that any of those persons knew or ought to have known at the time the property was acquired by the plan trust that the property was not, or would cease to be, a qualified investment.

Subsection 206.1(5) provides that, where two or more persons are entitled to a refund under subsection 206.1(4) in respect of a particular property, the refund must be shared. If the persons cannot agree on portions to be claimed by each, the Minister of National Revenue may fix the portions.

Subsection 206.1(6) provides a special rule that applies where a non-qualified investment subsequently becomes a qualified investment while being held by the plan trust. This could occur, for example, where the shares of a corporation are re-listed on a designated stock exchange. In these circumstances, subsection 206.1(6) provides that the trust is deemed to have disposed of the property for proceeds of disposition equal to its fair market value and to have immediately reacquired the property at a cost equal to that value. This rule ensures that a refund is available under subsection 206.1(4), without the need to actually dispose of the property.

Tax Payable Where Advantage Extended

ITA

206.2

New section 206.2 of the Act imposes a tax for a calendar year if, in the year, an advantage in relation to a registered disability savings plan is extended to any person who is, or who does not deal at arm's length with, a beneficiary under, or a director of, the plan. "Advantage" is defined in subsection 205(1).

Subsection 206.2(1) sets out the charging provision for the tax. A separate tax is payable for each such advantage.

Subsection 206.2(2) provides that the amount of the tax is equal to:

- in the case of a benefit, the fair market value of the benefit; and
- in the case of a loan, the amount of the loan.

Subsection 206.2(3) provides that each person who is a director of the plan, at the time that the tax is imposed, is jointly and severally, or solidarily, liable to pay the tax. If, however, the advantage is extended by the issuer of the plan or by a person not dealing at arm's length with the issuer, the issuer is liable to pay the tax and not the directors.

Tax Payable on Use of Property as Security

ITA

206.3

New section 206.3 of the Act imposes a tax for a calendar year on the issuer of a registered disability savings plan if, in the year, with the consent or knowledge of the issuer, a trust governed by the plan uses or permits to be used any property held by the trust as security for indebtedness of any kind. The amount of the tax is equal to the fair market value of the property at the time the property commenced to be used as security.

Waiver of Liability

ITA

206.4

New section 206.4 of the Act allows the Minister of National Revenue to waive Part XI tax where it is just and equitable to do so, having regard to all factors (including whether the tax arose because of a reasonable error and the extent to which the same transaction also gave rise to tax under another provision of this Part).

Return and Payment of Tax

ITA
207(1)

New subsection 207(1) of the Act provides that a person liable for tax under Part XI for a calendar year must file a return for the year, and pay any tax owing (net of the person's allowable refund, as defined in subsection 205(1), for the year), within 90 days after the end of the year.

Refund

ITA
207(2)

New subsection 207(2) of the Act requires the Minister of National Revenue to refund a person's allowable refund for a calendar year, to the extent that it has not been applied against the person's tax payable for the year.

Multiple Directors

ITA
207(3)

New subsection 207(3) of the Act provides two rules that apply where two or more directors of a registered disability savings plan are jointly liable with each other to pay a tax under this Part.

Paragraph 207(3)(a) provides that a payment by any of the directors on account of the joint liability reduces the joint liability to the extent of the payment.

Paragraph 207(3)(b) provides that, if one of the director files the required return, only that return need be filed.

Provisions Applicable to Part

ITA
207(4)

New subsection 207(4) of the Act provides that certain provisions of Part I relating to returns, assessments, payments and appeals apply for the purposes of this Part with any required modifications.

Clause 20

Tax on Income from Canada of Non-resident Persons

ITA
212(1)(r.1)

New paragraph 212(1)(r.1) of the Act imposes withholding tax on payments made from a registered disability savings plan to a non-resident, to the extent that the payment would have been included in income under Part I if it were made to a resident.

This amendment applies to the 2008 and subsequent taxation years.

Clause 21

Where Taxpayer Information May be Disclosed

ITA
241(4)(d)

Subsection 241(4) of the Act authorizes the limited communication of taxpayer information to government officials outside of the Canada Revenue Agency.

New subparagraph 241(4)(d)(vii.5) allows information to be communicated to an official for the purposes of the administration and enforcement of the proposed *Canada Disability Savings Act*.

This amendment applies to the 2008 and subsequent taxation years.

Clause 22

Definitions

ITA

248(1)

Subsection 248(1) of the Act defines a number of terms that apply for the purposes of the Act.

“disposition”

The expression “disposition” is used throughout the Act, particularly in provisions relating to transactions involving property. Paragraph (f) of the definition generally avoids a disposition in the case of certain simple trust-to-trust transfers, such as transfers of property between trusts governed by an RESP, involving no change in beneficial ownership. For paragraph (f) to apply, the transferor trust is required to be the same type of trust as the transferee trust.

Paragraph (f) of the definition is amended so that it also applies to trusts governed by a registered disability savings plan. This will ensure that a transfer of property between registered disability savings plan trusts, which can occur when one registered disability savings plan replaces another, will generally not be treated as a disposition.

This amendment applies to the 2008 and subsequent taxation years.

“registered disability savings plan”

Subsection 248(1) is amended to introduce the definition “registered disability savings plan”, effective for the 2008 and subsequent taxation years. For information, refer to the commentary on the definition in new subsection 146.4(1).

Clause 23

Investments in Limited Partnerships

ITA

253.1

Section 253.1 of the Act applies for specified provisions of the Act and Regulations where a trust or corporation holds an interest as a limited partner in a limited partnership. It provides that the trust or corporation will not, solely because of its acquisition and holding of the limited partnership interest, be considered to carry on any business or other activity of the partnership.

Section 253.1 is amended so that it also applies for the purpose of paragraph 146.4(5)(b), which provides that a trust governed by a registered disability savings plan is taxable on any business income it may earn. The amendment to section 253.1 ensures that the acquisition and holding of a limited partnership interest by a trust governed by a registered disability savings plan will not expose the trust to taxation, provided the interest is a qualified investment for the trust.

This amendment applies to the 2008 and subsequent taxation years.

Income Tax Regulations

Clause 24

Information Returns – Qualified Investments

ITR
221(2)

Subsection 221(2) of the *Income Tax Regulations* requires certain types of corporations and trusts to file an information return in respect of a taxation year whenever the corporation or trust claims that its shares or units are a qualified investment for RRSPs or other certain registered plans.

Subsection 221(2) is amended to extend the requirement for filing an information return to a corporation or a trust that claims that its shares or units are a qualified investment for registered disability savings plans. This amendment, which applies to the 2008 and subsequent taxation years, is consequential on the introduction of registered disability savings plans.

Clauses 25 and 26

Qualified Investments

ITR
Part XLIX

Part XLIX of the Regulations lists a number of types of property that are prescribed to be qualified investments for trusts governed by RRSPs and other registered plans.

Part XLIX is amended so that it applies for the purposes of the definition “qualified investment” in new subsection 205(1) of the Act that applies to trusts governed by a registered disability savings plan. With the exception of property described in subsections 4900(6) and (12) of the Regulations, the amendments to Part XLIX provide that the types of property that are prescribed to be a qualified investment for a registered disability savings plan are those that are prescribed for an RRSP.

Several provisions in subsection 4900(1) restrict eligibility of a particular investment if the issuer of the investment is a person who is an annuitant, a beneficiary, an employer or a subscriber under the governing plan, or any other person who does not deal at arm’s length with that person.

These provisions are amended so that the restrictions also apply to investments that are issued by a person who is a director of, or a beneficiary under, a registered disability savings plan, or any other person who does not deal at arm’s length with that person. To improve readability, this is accomplished by introducing a new definition “connected person” in subsection 4901(2).

These amendments apply to the 2008 and subsequent taxation years.

Consequential Amendments

Clause 27

Definitions

EIA

144

“income”

Section 144 of the *Employment Insurance Act* defines a number of terms for the purpose of the repayment rules for employment insurance (EI) benefits.

The definition of “income” is amended to exclude payments from a registered disability savings plan from the income base upon which EI benefit repayments are calculated.

This amendment applies to the 2008 and subsequent taxation years.

Clause 28

Definitions

OASA

2

“income”

Section 2 of the *Old Age Security Act* defines a number of terms for the purpose of that Act.

The definition of “income” is amended to exclude payments from a registered disability savings plan from the income base upon which certain benefits payable under that Act are calculated.

This amendment applies to the 2008 and subsequent taxation years.

Overview of the Proposed Canada Disability Savings Bonds and Grants

The purpose of the proposed Canada disability savings bonds and grants is to enhance the long-term financial security of Canadians with severe disabilities by creating incentives for families, friends and people with disabilities themselves to save for the future.

The proposed bonds and grants stem from recommendations made by an Expert Panel created in 2006 to study the issue of using savings vehicles to assist families to provide for the financial security of children with severe disabilities. Budget 2007 acted on the recommendations of the Expert Panel by proposing a new Registered Disability Savings Plan (RDSP) with a Canada Disability Savings Grant (CDSG) and a Canada Disability Savings Bond (CDSB).

The framework for the RDSP would be created through amendments to the Income Tax Act. These amendments would set out the rules to establish the plans and detail certain design features of the RDSP such as the eligibility criteria. The proposed Canada Disability Savings Act (CDSA) would set out the design and conditions for receiving the bond and grant. Under the proposed CDSA, grant and bond payments will be made from the Consolidated Revenue Fund, the government's general financial account.

The Canada Disability Savings Grant would be provided at matching rates of 1 for 1, 2 for 1, and 3 for 1, that will apply to annual contributions, depending on family income and the amount contributed, up to a maximum lifetime limit of \$70,000.

- For families with net income equal to or less than \$74,357, the government will provide:
 - \$3 for every \$1 on the first \$500 of contributions;
 - \$2 for every \$1 on the next \$1,000 of contributions.
- For families with net income over \$74,357:
 - \$1 for every \$1 on the first \$1,000 of contributions.

In order to better support low- and modest-income families, children in care, and adults without family support, the Government of Canada would contribute through the Canada Disability Savings Bond. The CDSB provides up to \$1,000 per year to RDSPs up to a maximum lifetime limit of \$20,000. CDSBs would not be dependent on contributions. The maximum annual amount for the CDSB would be \$1,000 and would be paid to an RDSP where family net income does not exceed \$20,883. The CDSB would be decreased gradually for those with family net income between \$20,883 and \$37,178. These income thresholds are in 2007 dollars and will be indexed to inflation for 2008, when RDSPs become operational, and for subsequent years.

While the beneficiary is a child (i.e. until the end of the year in which the beneficiary turns 18), the net family income of the beneficiary's parents or legal guardian would be used to determine whether the beneficiary would be eligible for the bond and matching grant amounts. Thereafter, the net family income of the beneficiary would be used, even if they live with their parents or legal guardian.

A RDSP will be eligible to receive both CDSBs and CDSGs up until the end of the year in which the plan beneficiary attains 49 years of age.

To be eligible to open an RDSP and receive the bonds and matching grants, the beneficiary would have to qualify for the Disability Tax Credit (DTC) and be a Canadian resident. In addition, the Social Insurance Number (SIN) of the beneficiary and the parent or legal guardian would be required.

The Expert Panel recommended and Budget 2007 proposed a bond and grant repayment rule to ensure that RDSPs are used only to promote long-term savings and to ensure government funds contributed in previous years are not withdrawn and used to leverage matching grants thereafter. The rule requires the repayment of all CDSGs and CDSBs transferred to an RDSP in the ten years preceding one of the following events:

1. A withdrawal from the plan;
2. The loss of eligibility for the DTC; or
3. The death of the beneficiary.

For example, if money is withdrawn from a RDSP, any bond and grant, and associated investment income, received in the previous ten years must be repaid. The repayment rule will be defined in the Canada Disability Savings Regulations.

Under the proposed CDSA, the Governor in Council would have authority to make regulations to further carry out the purpose and provisions of the proposed Act. The areas covered by these regulations could include conditions on CDSG and CDSB payments, terms and conditions to be applied to agreements between the government and issuers of the RDSP, repayment of CDSG and CDSB to government and earnings on them, and the waiving of requirements to prevent undue hardship.

As stated in Budget 2007, it is intended that RDSPs will be available in 2008.

